

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JET BLACK LLC, ET AL,</p> <p>v.</p> <p>Respondent:</p> <p>ROUTT COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Kimberly E. Lord, Esq. Johnson & Repucci LLP</p> <p>Address: 2521 Broadway, Suite A Boulder, Colorado 80304</p> <p>Phone Number: (303) 442-1900</p> <p>Attorney Reg. No.: 18802</p>	<p>Docket Numbers 41127 through 41140</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 28 and 29, 2004, MaryKay Kelley and Karen E. Hart presiding. Petitioners were represented by Kimberly Lord, Esq. Respondent was represented by John D. Merrill, Esq. Petitioners are requesting an abatement/refund of taxes on the subject properties for tax year 2002.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

Routt County Schedule Nos. R8164285, R8165858, R8165318, R8165859, R8165355, R8165860, R8164284, R8164283, R3205567, R8164282, R8165857, R8164281, R8165856, R8164275, R8165851, R8164280, R8164279, R8165855, R8164278, R8164277, R8165854, R8164276, R8165852)

The subject properties consist of a planned development known as Storm Mountain Ranch in unincorporated Routt County, about five miles south of the City of Steamboat Springs at the base of Rabbit Ears Pass. The development consists of 35-acre and 70-acre sites with common property and a conservation easement.

ISSUES:

Petitioners:

Petitioners contend that Respondent has incorrectly allocated and valued the common elements to each of the 14 owner parcels. The common elements are significantly impaired due to restrictions in the declarations, conditional use permit, and conservation easement. The common area parcels and improvements cannot be sold or readily transferred. Petitioners believe that any value the common elements have is reflected in the land value of the 14 owner parcels and that the common elements cannot be separately valued. Even if they could be separately valued, they have little or no value. There are no sales of common property similar to the subject.

Respondent:

Respondent contends that the value of the common elements must be separately taxed, as they are not reflected in the value of the owner parcels, which are classified and valued as agricultural land. The common elements cannot be tax exempt. Respondent used an extraction method to determine the common element value contribution to each of the owner parcels.

FINDINGS OF FACT:

1. The subject properties consist of 14 lots in the Storm Mountain Ranch development, together with common elements. The 14 owner properties consist of the Ranch Central parcel, the Canyon parcel, and parcels 1 through 12. Four of the owner parcels have improvements in various stages of completion and the value of those improvements is not in dispute. The land portion of the fourteen parcels is classified and valued as agricultural, which also is not in dispute. The development consists of approximately 1,063 acres with owner parcels varying in size from 35 acres to 70 acres.

2. All of the common elements, Parcels A, B, C, D, and E are owned by the Homeowner Association (HOA). These parcels are classified as agricultural land. Parcels B and C are unimproved. The Hideout cabin is located on Parcel A. The cabin is over 3,200 square feet in size, with a great room, fireplace, kitchen, two master suites with master bathrooms and a second floor "bunk room" with bath. A 3,528 square foot pole barn for hay storage and a 3,100 square foot restored stable are located on Parcel D. The improvements located on Parcel E consist of a lodge, 4 cabins, and a horse barn. The lodge is over 7,000 square feet in size, with a great room, fireplace,

kitchen facility, office, an apartment for the ranch manager in the basement, and extensive decking. Two of the cabins are 1,200 square feet in size and two are 750 square feet in size. The cabins are one and two bedrooms with fireplaces, steam showers and jetted tubs, lofts, and decks; they do not have kitchen facilities. The lodge and cabins are used by the homeowners and are not available to the public. The horse barn is approximately 3,770 square feet in size and has three horse stalls, a tack room, office and hay loft. There is a conservation easement that covers 793 acres, including the HOA parcels and portions of the privately owned parcels. The conservation easement does not allow the conveyance of the common elements to individuals.

3. Storm Mountain Ranch was set up under the Colorado Common Interest Ownership Act (CIOA). The Yampa Valley Land Trust holds the conservation easement. The conditional use permit further limits the use of the common elements. There can be no commercial use of the lodge or cabins. Guests cannot stay longer than one month at a time; no one can live in the cabins. The development rights were stripped from the ranch, which were worth \$5 million.

4. The assessment date is January 1, 2002. Notices of Value were not sent to the owners of vacant property, as the value had not changed from 2001. Notices of Value were sent to the property owners who had added improvements to the parcels subsequent to 2001. Special Notices of Value (SNOV) dated August 7, 2002, were sent to all of the Petitioners, adding value to each parcel for the common elements. The values listed on the SNOV are the subject of this appeal.

5. Petitioners' witness, Mr. Jeff Temple, one of the original developers of the ranch, testified that he was President of the Storm Mountain Homeowner's Association (HOA) until January 1, 2003. He also owns a parcel in the ranch on which he built his home.

6. Mr. Temple testified that when he received the Notice of Value in May of 2002, he appealed the value of his property, Parcel 7, as the Assessor valued his property much higher than his cost to build his house. The Assessor explained that the common elements enhanced his property value.

7. Mr. Temple does not believe there is a separate identifiable value for the common elements. The subject property has many unique features, including rock cliffs, fishery, 10-mile trail system that connects to the National Forest, and lots of moose, bear and elk on the property. They are the only private facility in the world that has received the Orvis endorsement. There are 10 acres of lined, aerated ponds that are stocked with pathogen-free fish of various species. Mr. Temple testified that there are errors in Respondent's appraisal, such as square footage, lack of a kitchen in the four fishing cabins, and the lodge basement finish, which is half the size stated.

8. Under cross-examination, Mr. Temple testified regarding the cost of the ranch improvements as follows:

Stable restoration	\$ 159,931.00
New barn	\$ 420,849.00
Pole barn	\$ 50,339.00

9. Costs of the cabins and lodge, as found in Respondent's Exhibit HH are as follows:

Hideout Cabin	\$1,517,903.00
Awapa Lodge	\$2,005,368.00
Thunder and Lightning Cabins	\$ 485,792.00
Heritage and Four Seasons Cabins	\$ 807,181.00

10. Mr. Temple testified that additional improvements made to the ranch had the following costs:

Entry gate and landscaping	\$ 222,000.00
Entry bridge	\$ 206,036.00
Streams and ditches	\$1,100,000.00
Stocking fish	\$ 76,000.00
Lateral ditch	\$ 77,000.00
Waterfall	\$ 57,000.00
Stream structure in meadows	\$ 311,000.00

11. Mr. Temple testified that the lateral ditch is located primarily on the owner parcels, as is some of the stream structure in the meadows. The land improvements were constructed to enhance the value of the owner parcels.

12. Petitioners' witness, Mr. Larry Wayne Stark, MAI and President of National Valuation Consultants, presented the following values:

<u>Docket Number</u>	<u>Parcel Description</u>	<u>Total Value</u>
41135	1A & 1B	\$ 1,440.00
41140	2A & 2B	\$ 1,200.00
41139	3A & 3B	\$ 1,200.00
41138	4	\$ 600.00
41137	5A & 5B	\$ 1,200.00
41136	6	\$ 600.00
41134	7A & 7B	\$913,910.00
41133	8A & 8B	\$ 1,200.00
41131	9A & 9B	\$ 1,190.00
41130	10A & 10B	\$ 1,200.00
41127	11A & 11B	\$882,740.00
41128	12A & 12B	\$ 1,200.00
41129	Canyon A & B	\$223,450.00
41132	Ranch Central	\$356,970.00

13. Mr. Stark testified that the value of the common elements is generally a part of the adjoining land value; however, the subject property is classified as agricultural. The subject property is more restrictive than usual under the HOA documents, conditional use permit, and conservation

easement, as well as each property owner having a 1/14th fractional interest in the common elements. The largest restriction is that the common improvements cannot be sold. He believes the value is in the land and there is no value to the common elements; they cannot be sold.

14. Mr. Stark testified that he does not believe Respondent's methodology is proper, but he made extraordinary assumptions in attempting to achieve a value using Routt County's methodology. The subject has residential improvements, so he looked at the market approach. There was no income so he did not look at the income approach. The cost approach is a test of reasonableness. According to Petitioners' Exhibit 15, page 75, Mr. Stark used the income approach to value the common area agricultural land and the cost approach to value the improvements, for a total value of \$1,126,359.00. This value would then be divided equally amongst the 14 owner parcels. However, Mr. Stark still believes no separate value should be attributed to the common elements.

15. Mr. Stark testified that he has an issue with Respondent's Hideout Cabin value. It is a nice cabin but not nicer than anything in Routt County. The Hideout Cabin was valued significantly higher by Respondent than the house sales range of \$122.00 to \$330.00 per square foot. None of the Routt County sales included common elements, fractional ownership, or restrictive covenants. Respondent's assigned value of \$4.1 million is a fee simple estate value. A conservation easement results in a 25% to 75% degradation of value. There are fractional interests involved as well, with a 40% to 60% degradation of value. He believes there is a 90% reduction in value of the subject property due to the restrictions, although his report states at least a 75% reduction in value. The HOA dues capped at 10% is a negative \$5 million in value, though he did not remove that amount in his report. He ultimately concluded that there is no value to the improvements as a separate and single entity.

16. Mr. Stark testified that he looked at 12 other shared ranch properties in Colorado. The Grand River Ranch has nice improvements: fishing, skeet shooting, a lodge with guest rooms, fishing cabins, and a good restaurant. The improvements are assessed without taxes and are agriculturally classed. None of the 12 properties had elements separately taxed. Summit County is taxing Shadow Creek to the HOA, which he believes is illegal.

17. Mr. Stark testified that he has reviewed Routt County's current appraisal report. He does not believe that they have valued the common elements on the market approach. Respondent used an allocation of the site value to get a contributory value. He is not sure that they did in fact achieve the value contribution of only the common elements. Respondent took the market value of a particular site, which includes amenities, views, etc. and determined the subject sites were worth \$2.5 million each. They then went to other areas without common property and extracted the value difference. He believes they did not adjust appropriately for the land value.

18. Mr. Stark testified that he is familiar with the Catamount sale. Lake Catamount is a golf course community with a lake that is not as professionally run as the subject. There are also time-shares and other negative factors; adjustments should be made. Lake Catamount is inferior, not similar to the subject. Respondent also did not consider the fractional interest issue. The cost segregation indicates that they would not be worth more than \$4 million, certainly not \$17 million.

19. Under cross-examination, Mr. Stark testified that the use and enjoyment of “everything that is there,” as well as the property itself, are included in the purchase price of a subject tract. He cannot figure the difference for the common area value contribution. Grand River Ranch is most similar to the subject; the improvements are valued at approximately \$1.2 million. Typically, the common property elements have value reflected in the value of the properties. Mr. Stark admitted that the common property value is not reflected in agricultural properties.

20. Petitioners are requesting that no value be allocated to the common area elements. In the alternative, the common area elements should not have a 2002 actual value in excess of \$4,000,000.00. The requested value for each of the subject properties is shown on page 80 of Petitioner’s Exhibit 15, the same values presented by Mr. Stark and listed in Finding of Fact 12.

21. Respondent’s witness, Ms. Amy J. Williams, Routt County Assessor, presented the following values based on the market approach:

<u>Docket Number</u>	<u>Parcel Desc</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Common Element Value</u>	<u>Total Value</u>
41135	1A & 1B	\$1,440.00	\$ 0.00	\$1,250,200.00	\$1,251,640.00
41140	2A & 2B	\$1,200.00	\$ 0.00	\$1,250,200.00	\$1,251,400.00
41139	3A & 3B	\$1,200.00	\$ 0.00	\$1,250,200.00	\$1,251,400.00
41138	4	\$ 600.00	\$ 0.00	\$1,250,200.00	\$1,250,800.00
41137	5A & 5B	\$1,200.00	\$ 0.00	\$1,250,200.00	\$1,251,400.00
41136	6	\$ 600.00	\$ 0.00	\$1,250,200.00	\$1,250,800.00
41134	7A & 7B	\$1,200.00	\$1,043,800.00	\$1,250,200.00	\$2,295,200.00
41133	8A & 8B	\$1,200.00	\$ 0.00	\$1,250,200.00	\$1,251,400.00
41131	9A & 9B	\$1,190.00	\$ 0.00	\$1,250,200.00	\$1,251,390.00
41130	10A & 10B	\$1,200.00	\$ 0.00	\$1,250,200.00	\$1,251,400.00
41127	11A & 11B	\$1,200.00	\$1,064,900.00	\$1,250,200.00	\$2,316,300.00
41128	12A & 12B	\$1,200.00	\$ 0.00	\$1,250,200.00	\$1,251,400.00
41129	Canyon A & B	\$1,200.00	\$ 150,800.00	\$1,250,200.00	\$1,402,200.00
41132	Ranch Central	\$13,060.00	\$ 534,200.00	\$1,250,200.00	\$1,797,460.00

22. Ms. Williams testified that 10 of the parcels in Storm Mountain Ranch are vacant. Other than the residential improvements and agricultural land, all of her appraisal reports are the same for the common element values.

23. There were three land sales in Storm Mountain Ranch and nine listings during the base period. She developed a value conclusion of \$2,550,000.00 for the 70-acre parcels and \$2,400,000.00 for the 35-acre parcels, which included all of the rights and common elements associated with the parcels.

24. Ms. Williams testified that she next looked at comparable sales without common element interests. She concluded to a representative value of \$1 million in Lake Catamount, which

ranged in site size from 35 acres to 50 acres. She concluded to a value of \$875,000.00 for Catamount Ranch, which has only 5-acre sites but is very exclusive. Priest Creek Ranch has some common elements and sites approximately 4 acres in size; she established a \$575,000.00 sales price. She also considered five un-platted sales ranging in size from 35 acres to 111.2 acres, which ranged in sales prices from \$9,901.00 per acre to \$21,163.00 per acre.

25. Ms. Williams concluded to a unit value of \$1 million for the non-common element, land only value of the 70-acre subject sites, and \$850,000.00 for the non-common element, land only value of the 35-acre subject sites. The extraction method was then used to conclude a contributory value of the common elements of \$1,250,200.00 per subject site after extracting the market land value of the common property parcels and inserting the agricultural land value, as shown on pages 32-34 of her report, Respondent's Exhibit EE.

26. Regarding the market value of the improved properties, Ms. Williams used three sales that were not located in a common element community. The analysis did not include anything regarding common element value.

27. Under cross-examination, Ms. Williams testified that she is identifying the value of each homestead's interest in the common element. She did not adjust the property on Respondent's Exhibit D for the conservation easement. There is no diminution of value on the owner parcels due to the conservation easement; the build-out density is only one or two units less than it was before the restrictions were put in place.

28. Ms. Williams testified that the common elements must be taxed, as they cannot be tax exempt. She identified the 1/14 ownership interest and valued it according to the market response in the common elements. She is not separately valuing the common elements, but is valuing each homestead parcel as an entire unit. She looked at the property as though vacant, without consideration of the agricultural classification. She valued the fee simple market value as though unencumbered. She valued the interest in the common area for each homestead parcel, not the common elements themselves.

29. Ms. Williams testified that she did not use the income approach as the subject property is not income generating. She did not use the cost approach. She only used the sales comparison approach.

30. Ms. Williams admitted that Lake Catamount has gravel roads, whereas Storm Mountain has paved roads. She does not know about the Lake Catamount fishing. Lake Catamount has some town homes and a restaurant but no equestrian facilities or trees. Catamount Ranch is substantially inferior to the subject; it has smaller lots and surrounds a golf course. However, it is similar to the subject in building envelope size. It has commercial facilities including a pro shop. The un-platted sales do not have common elements.

31. Respondent assigned the following actual values to the subject properties for tax year 2002:

<u>Docket Number</u>	<u>Parcel Description</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Common Ag Value</u>	<u>Common Improvements</u>
41135	1A	\$720.00	\$ 0.00	\$ 5,740.00	\$144,040.00
	1B	\$720.00	\$ 0.00	\$ 5,740.00	\$144,040.00
41140	2A	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
	2B	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
41139	3A	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
	3B	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
41138	4	\$600.00	\$ 0.00	\$11,470.00	\$288,090.00
41137	5A	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
	5B	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
41136	6	\$600.00	\$ 0.00	\$11,470.00	\$288,090.00
41134	7A	\$600.00	\$912,700.00	\$ 5,740.00	\$144,040.00
	7B	\$610.00	\$ 0.00	\$ 5,740.00	\$144,040.00
41133	8A	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
	8B	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
41131	9	\$1,190.00	\$ 0.00	\$11,470.00	\$288,090.00
41130	10	\$1,200.00	\$ 0.00	\$11,470.00	\$288,090.00
41127	11A	\$600.00	\$881,540.00	\$ 5,740.00	\$144,040.00
	11B	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
41128	12A	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
	12B	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
41129	Canyon A	\$600.00	\$ 0.00	\$ 5,740.00	\$144,040.00
	Canyon B	\$600.00	\$222,250.00	\$ 5,740.00	\$144,040.00
41132	Ranch Central	\$13,060.00	\$343,910.00	\$11,470.00	\$288,090.00

32. Petitioners' rebuttal witness, Mr. Joel Leonard, testified that when he was looking for property to purchase, he disqualified Priest Creek as it did not have a facility for horses and he could not have a yard due to the incline. It has lesser roads than the subject properties and only has city views. Lake Catamount is not comparable to the subject. The lake is infested with Northern Pike and pelicans have ruined the trout fishing. The sites are 35 acres with a building envelope of 3-5 acres and all buildings and horses have to be kept within the building envelope. He was looking for a quiet atmosphere but there were going to be 60 townhome owners in Lake Catamount. The subject covenants require individual ownership and cannot be used by anyone other than family members. The subject property is a ranch and they have cattle drives and put up hay. Catamount Ranch is a golf community, not a ranch, and has no fishing. He considered the subject a bargain, as he can ride a horse 100 miles to the state of Wyoming, all off private property. He was also impressed with the canyon at the subject property, which is so spectacular that he could not believe it could be privately owned.

33. In rebuttal, Mr. Stark testified that the extraction methodology as found in The Appraisal of Real Estate, 12th Edition, is used generally where you subtract the value of the buildings and get the value of the land. Respondent's method is the reverse but the book does not speak to that. He believes that the value of the subject property should be the fair market value of the common elements, not the contributing value. Respondent is not developing a fair market value.

The common elements have no value by themselves.

34. Mr. Temple testified that Lake Catamount is a competing property but is vastly inferior to the subject; it is a municipal-type development with privacy loss, the roads were chip sealed versus the subject's paved roads, it is 20 minutes from town whereas the subject is 5 minutes from town, and has multi-family housing versus the subjects' single family housing.

35. Mr. Temple testified that Catamount Ranch has a huge difference in density as compared to Storm Mountain Ranch. The creek at Catamount Ranch is dry in the summer due to the water draw, which means no fishing. Storm Mountain has a year-round water supply. Priest Creek is unbelievably inferior to the subject properties, with gravel roads, no live water, poor well water quality, and a sub-par front entrance. He is familiar with un-platted Sale 4, which has a change of use, the water is not easy to obtain, and there are no trees. None of the other comparable sales have wooden bridges like the subject, which are vastly more expensive to maintain. The subject property also has landscaping that cost \$886,000.00.

36. Upon questioning by the Board, Mr. Temple clarified that the HOA dues are \$33,000.00 per year for each of the 14 lot owners. The HOA expenses are approximately \$500,000.00 per year, which includes the ranch hand salaries.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the tax year 2002 valuation of the subject property was correct.

2. The Board recognizes that common element value contribution is reflected in the consideration paid in an arms-length, market transaction. For properties that are valued on the market approach using sales of other comparable properties that have common elements, this common element value is included in the ad valorem valuation placed on the privately held units. For these properties, the common elements should not be separately listed and taxed as it would result in a double taxation situation.

3. Petitioners argue that the addition of any value to the privately held subject properties for the common elements in Storm Mountain Ranch amounts to double taxation. We disagree. The ad valorem agricultural land valuation statutes consider only the productive capacity of each respective acre of the privately held parcels and are not reflective of market value. As a result, the common element value is not reflected on the tax rolls. We find no statutory authority to exempt common element values. Therefore, these areas must be separately listed and valued in the case of agriculturally classified planned developments with common elements. The Board has previously ruled on this issue in its order regarding Respondent's motion dated February 4, 2004

4. C.R.S 38-33.3-105(2) reads as follows:

In a condominium or planned community with common elements, each unit

that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate and must be separately assessed and taxed. The valuation of the common elements shall be assessed proportionately to each unit, in the case of a condominium in accordance with such unit's allocated interests in the common elements and in the case of a planned community in accordance with such unit's allocated common expense liability, set forth in the declaration, and the common elements shall not be separately taxed or assessed. Upon the filing for recording of a declaration for a condominium or planned community with common elements, the declarant shall deliver a copy of such filing to the assessor of each county in which such declaration was filed.

5. As 35 or 70 acre agriculturally classified and valued land parcels, the subject properties' ad valorem value only represents the value of the actual acreage of each parcel; the common element value is not reflected. Therefore, the common element value must be determined and separately listed on each privately held unit.

6. Having determined that the common elements in Storm Mountain Ranch must be separately valued and assessed, the Board now turns to the valuation methodology for the common elements. Petitioners argued that only the market approach could be considered in the valuation of the common elements. Petitioners' witness, Mr. Leonard, testified that Storm Mountain Ranch is a working cattle and hay ranch; it has agricultural improvements such as the hay barn, restored barn, and stable. The four smaller fishing cabins are not self-contained residential units, as they do not have kitchens and are only used for short-term lodging; they are recreational improvements. At least for these properties, all three approaches may be considered.

7. Petitioners' witness, Mr. Stark, concluded that there is no value to the improvements as separate and single entities. We believe that the common elements' contribution to the value of the owner parcels is what must be valued, not individual values for each common element parcel as though separate properties.

8. The Board upholds Respondent's methodology, though we disagree with the land only market value conclusion of Respondent for the subject lots. We believe the subject lots are far superior to the comparable properties, and thus, should have a land only market value nearer \$2 million per site, which would reduce the contributory value of the common element interest to \$839,400.00 for each of the 14 privately held sites. The Board notes that this value is higher than Respondent's assigned value of \$288,090.00 and the Board has no power to increase the value. The remaining values are not in dispute.

ORDER:

The petitions are denied.

APPEAL:

Petitioners may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

DATED and MAILED this 25th day of January 2005.

BOARD OF ASSESSMENT APPEALS

MaryKay Kelley

MaryKay Kelley

Karen E Hart

Karen E. Hart

This decision was put on the record

JAN 25 2005

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

Penny S. Lowenthal
Penny S. Lowenthal

