

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioner: KRISTIN S. HJELLE, v. Respondent: MESA COUNTY BOARD OF COMMISSIONERS.	
Attorney or Party Without Attorney for the Petitioner: Name: Kristin S. Hjelle Address: P.O. Box 2803 Grand Junction, Colorado 81502 Phone Number: (970) 245-8513	Docket Number: 44616
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on March 29, 2005, Sondra W. Mercier and Karen E. Hart presiding. Petitioner appeared pro se. Respondent was represented by Valerie J. Robison, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2003.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Mesa County Schedule No. 4207-153-00-034

The subject property consists of a possessory interest for Bureau of Land Management (BLM) Special Use Lease #CO-130-03-019.

ISSUES:

Petitioner:

Petitioner contends that she does not have exclusive use of the property on which she operates and therefore does not qualify as a taxable possessory interest.

Respondent:

Respondent contends that the subject property qualifies as a possessory interest. The permit provides a revenue generating capability, the actual permit is the exclusive use, and the permit is of a sufficient duration to realize a private benefit.

FINDINGS OF FACT:

1. Petitioner, Ms. Kristin Hjelle, owner of Desert Crags & Cracks Rock Guides, LLC, testified that she does not meet criteria two of the possessory interest guidelines. She is not the sole permittee granted use of the BLM lands on which she operates. Multiple BLM permittees conduct commercial operations on the same BLM land. She cannot control or limit the presence or behavior of any other user. She cannot build any structures on the property for her exclusive use. Any private or commercial user can deny her use of the property if they arrive at the property first.

2. Ms. Hjelle believes there are discriminatory practices in the application of the definition of possessory interest. There are multiple permittees, and therefore, the real property is subject to double or multiple taxation, as there is no exclusive use. This is a tax on her use and not on the land itself. Her "piece of paper" (permit) does not give her any exclusive use of the property on which she operates.

3. Ms. Hjelle testified that there is no "significant incidents of private ownership" in conducting her business on public land. She does not believe that she meets all of the criteria for possessory interest.

4. Under cross-examination, Ms. Hjelle testified that she is disputing the taxing of the possessory interest, not the value. She cannot conduct her commercial activities on BLM land without a permit. The annual permit renewal costs \$80.00. Her permit is for five years with annual renewals and the permit is valid for use in multiple areas. However, the actual area she occupies is a minute fraction of the lands on which the permit applies.

5. Petitioner is requesting that the 2003 actual value of the subject property be removed from taxation.

6. Respondent's witness, Mr. Daniel Martinez, an appraiser with the Mesa County Assessor's Office, presented the following indicator of value:

Income: \$260.00

7. Mr. Martinez testified that the valuation reflects the right to use the land; it does not reflect the value of the actual land. Assessors are required to value possessory interests. He spoke with Division of Property Taxation (DPT) staff and other Assessor's office personnel to determine if the subject met the possessory interest criteria. He believes the subject property meets the possessory interest criteria.

8. Respondent's witness used the income approach to derive a value of \$260.00 for the subject property.

9. The valuation is based on the cost of Petitioner's permit. Following DPT guidelines, Mr. Martinez testified that he obtained the 2003 lease rate of \$80.00 from the BLM, as well as the lease duration of five years. He then developed a discount rate utilizing published sources and rate ranges furnished by DPT. He chose a 14% discount rate and added the effective tax rate of 2%, for a total net present value conversion rate of 16%. He applied a rate factor of 3.274294 to determine a total actual value of \$262.00, rounded to \$260.00.

10. Respondent assigned an actual value of \$260.00 to the subject property for tax year 2003.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the tax year 2003 valuation of the subject property was correct.

2. The Board was convinced that Petitioner's Special Use Permit creates a possessory interest. A possessory interest is a right to the possession and use of publicly owned property for a period of time less than perpetuity. (*Board of Commissioners v. Vail Associates, Inc.*, 19 P.3d 1263 (Colo. 2001)).

3. The Colorado Supreme Court listed three criteria as necessary when determining whether a possessory interest can be considered taxable. The three criteria are 1) An interest that provides a revenue-generating capability to the private owner independent of the government property owner; 2) The ability of the possessory interest owner to exclude others from making the same use of the interest; and 3) Sufficient duration of the possessory interest to realize a private benefit therefrom.

4. As to criteria one, the Special Use Permit allows Petitioner to generate revenue from government property. The permit creates a privilege to use public lands for commercial purposes and gives Petitioner an exclusive right to BLM lands for private gain. Petitioner clearly meets criteria one.

5. As to criteria two, the Special Use Permit creates an exclusive use. No commercial entity can operate on BLM land without a permit. The California case that is cited in the Colorado Supreme Court's decision in *Vail Associates* states that concurrent uses of property are not necessarily inconsistent with exclusivity. The Oregon case cited in *Vail Associates* states that, "Although a possessory interest always is marked by some degree of control and some degree of exclusivity, neither absolute control nor absolute exclusivity is required." We recognize that there are numerous commercial operators on BLM lands. However, no commercial use may be made of public lands without a Special Use Permit. Petitioner has a special right to use public lands for profit – a right that is held only by owners of Special Use Permits. The permits allow private parties to use government property for financial gain and limit the use of said government property for financial gain to only those that hold permits. Petitioner fulfills the requirements of criteria two.

6. Regarding criteria three, Petitioner's permit covers a time period of five years, a sufficient duration to realize a private benefit therefrom. Petitioner fulfills the requirements of criteria three.

7. Having determined that the subject property meets all three criteria as set by the Colorado Supreme Court in the *Vail Associates* case, the Board finds that Petitioner's Special Use Permit creates a possessory interest.

8. Based on all of the evidence and testimony presented, the Board finds that Respondent properly calculated the value of the Special Use Permit and affirms the assigned value of \$260.00 for tax year 2003.

ORDER:

The petition is denied.

APPEAL:

Petitioner 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 9th day of April 2005.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

Sondra W. Mercier

Karen E. Hart

Karen E. Hart

This decision was put on the record

APR 08 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

