

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ADOBE CREEK NATIONAL, INC,</p> <p>v.</p> <p>Respondent:</p> <p>MESA COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 46475</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 2, 2007, MaryKay Kelley and Sondra W. Mercier presiding. Petitioner was represented by Michael J. Russell, Esq. Respondent was represented by Angela M. Luedtke, 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:

**876 18 ½ Road, Fruita
(Mesa County Schedule Nos. 2697-213-00-086, 2697-213-00-092, 2697-214-00-034, 2697-214-00-053, 2697-214-00-087, 2697-281-00-271, 2697-281-00-272, 2697-281-00-276, 2697-281-00-277, 2697-281-00-280, 2697-281-00-317, 2697-282-00-786, 2697-282-00-788 and 2697-284-00-361)**

The subject property consists of a 27-hole daily fee golf course with a clubhouse, maintenance buildings and a residential dwelling.

Petitioner is requesting a value of \$3,483,572.00 for the subject property for tax year 2003. Respondent assigned an actual value of \$4,793,790.00 to the subject property for tax year 2003.

In June 2003, Petitioner appealed the 2003 valuation to the Mesa County Assessor’s Office and received a reduction in value and a notice of determination of \$4,793,790.00. Agent for Petitioner appealed the 2004 valuation of \$4,793,790.00 to the County Assessor, the County Board of Equalization and to the Board of Assessment Appeals and received a reduction in value to \$3,483,572.00. Consequently, the 2004 adjusted valuation is lower than the 2003 adjusted value for

the same property. Petitioner filed an abatement petition for tax year 2003 with the Board of County Commissioners in December 2005 seeking a reduction in value under §39-10-114(1)(a)(I) (A) C.R.S. 2002, which states in part: Except as otherwise provided ... if taxes have been levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation, the treasurer shall report the amount thereof to the board of county commissioners, which shall proceed to abate such taxes in the manner provided by law.

Petitioner contends in the abatement petition that both “Colorado statutes and Court of Appeals decisions require that, barring a physical change or unusual circumstances, the value of the property must be the same in both years of a valuation period. No such physical change or unusual circumstances occurred at this property.” Petitioner further contends that this petition for abatement of property taxes is based upon “erroneous valuation for assessment” and not on “overvaluation.”

Respondent moved to stay the proceedings pending a decision by the Colorado Court of Appeals in Red Junction LLC v. Mesa County, 2006CA000864. Respondent’s Motion to Stay is denied.

Respondent moved to dismiss the case, arguing that res judicata bars Petitioner from bringing this petition for abatement for tax year 2003 since the Petitioner filed a valuation appeal for the same tax year. Respondent’s Motion to Dismiss is denied.

C.R.S. §39-10-114 sets forth the authority for a taxpayer to file a petition for refund or abatement of taxes if the Petitioner believes that their property taxes have been levied erroneously or illegally. No abatement or refund of taxes will be permitted based upon the ground of overvaluation of property if an objection to such valuation has been made and a notice of determination mailed to the taxpayer. C.R.S. §39-10-114(1)(a)(I)(D). However, an abatement or refund of taxes based on an erroneous valuation will be permitted. Boulder Country Club v. Boulder County Board of Commissioners, 97 P.3d 119 (Colo.App. 2003).

Petitioner presented sufficient probative evidence and testimony to prove that the basis of the abatement petition for tax year 2003 is based on an "erroneous valuation". Petitioner does not contend that the valuation for tax year 2003 is incorrect because of valuation data. Rather, Petitioner contends the 2003 value is erroneous based on the court of appeals' holding in Cherry Hills Country Club v. Arapahoe County, 832 P.2d 1105 (Colo.App. 1992) that the valuation of a taxpayer's property should be the same for both years in a tax cycle, absent limited statutory exceptions.

As a result, the Board concludes that the petition for abatement for tax year 2003 is allowed and the value of the subject property should be reduced to \$3,483,572.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2003 actual value for the subject property of \$3,483,572.00.

The Mesa County Assessor is directed to change his/her records accordingly.

APPEAL:

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 19th day of May 2007.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

Sondra W. Mercier

MaryKay Kelley

MaryKay Kelley

This decision was put on the record

MAY 18 2007

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

Diane M. Fechisin

Diane M. Fechisin

