

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket Nos.: 50100 &  
50106**

Petitioners:

**DANIEL L. AND KATHERINE A. BJORKMAN, AND  
DANIEL L. BJORKMAN TRUST,**

v.

Respondent:

**MONTEZUMA COUNTY BOARD OF  
COMMISSIONERS.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on June 23, 2009, Diane M. DeVries and Karen E. Hart presiding. Petitioners were represented by Katherine A. and Daniel L. Bjorkman. Respondent was represented by Robert D. Slough, Esq. Petitioners are protesting the 2007 actual value of the subject properties as reflected on the Special Notices of Valuation issued by Respondent on September 28, 2007.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**43747 Road M, Mancos, Colorado  
(Montezuma County Schedule Nos. R004373, R004517, R012866, R013699, &  
R013700)**

There are a total of five subject parcels, two of which have single family residences, one parcel is vacant land with five mobile home hookups, one parcel is vacant land, and one parcel is the dude ranch facility. The subject properties total 599.52 acres in size. The dude ranch has 20 A-frame cabins, 54 recreational vehicle (RV) sites, a roping arena, and a riding stable. Ancillary buildings include a restaurant/banquet hall/saloon building, bath house, recreational hall, and utility buildings.

Petitioners' Exhibit 6 included tax year 2007 Special Notices of Valuation (SNOV), issued September 28, 2007, for each of the 5 subject properties. Petitioners' Exhibit 5 only included tax year 2007 Real Property Notices of Valuation (NOV), issued May 1, 2007, for 4 of the 5 subject properties: Schedule Nos. R004373, R012866, R013699, and R013700. The NOV for tax year 2007 concerning Schedule No. R004517 was not included in the exhibits provided by the parties.

On December 23, 2009, the Board issued an Order to Produce Documentation, ordering both parties to provide the Board with a copy of the 2007 Real Property Notice of Valuation for Schedule No. R004517. The Board received documentation from Petitioners and from Respondent on January 4, 2010. Documentation from both parties reflected a 2007 actual value of \$343,320.00 for Schedule No. R004517 as of May 1, 2007.

On May 1, 2007 the Montezuma County Assessor issued a Real Property Notice of Valuation (NOV) for each of the subject properties. The classification and value assigned to the subject properties on the NOVs were as follows:

Schedule No.	2007 NOV Classification	2007 NOV Actual Value
R004373	Agricultural Land	\$870.00
	Residential	\$21,480.00
	Commercial	\$1,081,700.00
R004517	Agricultural Land	\$2,150.00
	Residential	\$341,170.00
R012866	Agricultural Land	\$420.00
R013699	Agricultural Land	\$6,930.00
	Residential	\$17,400.00
R013700	Agricultural Land	\$430.00
	Residential	\$813,670.00

On September 28, 2007 the Montezuma County Assessor issued a Special Notice of Valuation (SNOV) for each of the subject properties, reclassifying the subject properties from agricultural, and increasing the actual value assigned to each property. The classification and value assigned to the subject properties on the SNOVs were as follows:

Schedule No.	2007 SNOV Classification	2007 SNOV Actual Value
R004373	Residential	\$358,140.00
	Commercial	\$1,069,820.00
R004517	Residential	\$737,860.00
R012866	Residential	\$163,370.00
R013699	Residential	\$1,695,680.00
R013700	Residential	\$850,910.00

Petitioners appealed the SNOVs to the Montezuma County Board of Commissioners, and then to this Board. Petitioners are challenging the valuation and classification of the subject properties as reflected on the SNOVs.

Respondent's witness, Mr. William Scott Davis, a Certified General Appraiser and the Montezuma County Deputy Assessor, testified that he inspected the subject properties three or four times in 2006. The Montezuma County Assessor's Office was aware of the actual use of the subject properties prior to the May 1, 2007 NOVs.

The Board is not convinced that the Montezuma County Assessor had the authority to issue the SNOVs for the subject properties for tax year 2007. Section 39-5-121(1)(a), C.R.S. states:

No later than May 1 in each year, the assessor shall mail to each person who owns land or improvements a notice setting forth the valuation of such land or improvements. . . Based upon the classification of such taxable property, the notice shall also set forth either the ratio of valuation for assessment to be applied to said actual value of all taxable real property other than residential real property prior to the calculation of property taxes for the current year or the projected ratio of valuation for assessment to be applied to said actual value of residential real property prior to the calculation of property taxes for the current year and that any change or adjustment of the projected ratio of valuation for assessment for residential real property shall not constitute grounds for the protest or abatement of taxes. . . The notice shall state, in bold-faced type, that the taxpayer has the right to protest any adjustment in valuation but not the estimate of taxes if such an estimate is included in the notice, the classification of the property that determines the assessment percentage to be applied, and the dates and places at which the assessor will hear such protest.

The Montezuma County Assessor was required to mail a tax year 2007 NOV with the actual value and classification of the subject properties by May 1, 2007. The Montezuma County Assessor only has authority to issue a SNOV if permitted by an exception to section 39-5-121(1)(a), C.R.S. Section 39-5-125(1), C.R.S. does provide one such exception:

Whenever it is discovered that any taxable property has been omitted from the assessment roll of any year or series of years, the assessor shall immediately determine the value of such omitted property and shall list the same on the assessment roll of the year in which the discovery was made and shall notify the treasurer of any unpaid taxes on such property for prior years.

However, as discussed by the Colorado Court of Appeals in *Jet Black, LLC v. Routt County Board of County Commissioners*, 165 P.3d 744, 750 (Colo.App. 2006), “§ 39-5-125(1) authorizes retroactive assessments of taxes from prior years on previously omitted property, *but not on omitted value.*” The SNOVs issued for the subject properties were not for omitted property, but rather a change in classification and increase in actual value of the subject properties.

Further, the Division of Property Taxation's Manual, the *Assessor's Reference Library*, does not reference issuing a SNOV for a change in classification. The section "Special Notices of Value: Circumstances Requiring a Special NOV" in volume 2, page 3.37, does not list change in classification as one of those circumstances.

There was no statutory exception permitting the Montezuma County Assessor to issue a SNOV to change the classification and increase the actual value of the subject properties after the May 1, 2007 NOV.

The Board concludes that the Montezuma County Assessor did not have authority to issue the 2007 SNOVs for the subject properties; therefore the SNOVs were invalid. The 2007 NOVs stand.

### **ORDER:**

The appeal of the valuations reflected on the SNOVs issued by Respondent on September 28, 2007 is dismissed.

The Montezuma County Assessor is directed to change his records to reflect the classification and actual value listed on the tax year 2007 Real Property Notices of Valuation for the subject properties.

### **APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

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

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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 8<sup>th</sup> day of January 2010.

**BOARD OF ASSESSMENT APPEALS**

*Diane M DeVries*

Diane M. DeVries

*Karen E Hart*

Karen E. Hart

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

*Heather Flannery*

Heather Flannery

