

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>STEAMBOAT SKI & RESORT CORP.,</p> <p>v.</p> <p>Respondent:</p> <p>ROUTT COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Thomas E. Downey, Jr., Esq. Downey & Knickrehm, P.C.</p> <p>Address: 733 East Eighth Avenue Denver, Colorado 80203</p> <p>Phone Number: (303) 813-1111</p> <p>E-mail: tdowney@downknick.com</p> <p>Attorney Reg. No.: 9686</p>	<p>Docket Number: 42428</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 27, 2004, Steffen A. Brown and Judee Nuechter presiding. Petitioner was represented by Thomas Downey, Esq. Respondent was represented by John D. Merrill, Esq.

1. This appeal was initially set for hearing on February 11, 2004, with a Rule 11 exchange date of January 28, 2004. On January 23, 2004, the Board advised Petitioner and Respondent that the hearing would have to be rescheduled but that the Board hoped to reschedule within the same week it was originally scheduled. By January 28th, due to conflicting schedules of the Board and the parties, it was determined that the matter would have to be continued to a future mutually agreeable date.

2. Because of its location, Routt County sent its Rule 11 documentation to the Board and the Petitioner on January 26th in order to assure its receipt by the due date. When the matter was continued beyond the originally scheduled week, Petitioner did not submit Rule 11 materials since the hearing was no longer scheduled 10 days thence.

3. This matter comes before the Board on the motion of the Respondent, Routt County Board of Commissioners, to dismiss the petition for failure to provide Rule 11 materials before the Rule 11 deadline or, in the alternative, to preclude the use of any evidence not disclosed by Petitioner before the Rule 11 deadline.

4. Petitioner argues that Rule 11 requires that documentation be submitted 10 business days prior to the hearing. Petitioner advised Respondent that Rule 11 materials would be supplied at least 10 days before the rescheduled hearing date in accordance with the provisions of Rule 11.

5. The Board conducted a hearing on Respondent's motion and heard oral argument. Petitioner provided Respondent with a copy of all Rule 11 materials prior to the commencement of this hearing on the Motion to Dismiss.

6. The Board considered the arguments presented and concluded that Petitioner did not gain an unfair advantage over Respondent by failing to adhere to the January 28, 2004 Rule 11 deadline. As of February 27, 2004, all Rule 11 documentation had been exchanged.

7. During the hearing, Petitioner stated that the Rule 11 materials provided prior to the hearing were prepared prior to Petitioner's receipt of Respondent's Rule 11 materials and were not modified after receipt of Respondent's materials. Based upon this assurance, Respondent requested that, if the Board were to deny the originally requested relief, in the alternative the Board issue an Order stating that the Rule 11 materials exchanged to date would constitute the final Rule 11 exchange and that no further Rule 11 exchange would be allowed on this matter. Petitioner agreed to this proposal, but clarified that the Rule 11(b) rebuttal documentation would still be exchanged prior to the rescheduled hearing date. Respondent concurred.

8. Respondent's Motion to Dismiss is denied.

ORDER:

On or before March 15, 2004, the parties are ordered to inform the Board, in writing, of a mutually agreeable hearing date, subject to Board availability. No new Rule 11 documentation may be exchanged; however, pursuant to Rule 11(b), rebuttal documentation shall be exchanged three business days prior to the hearing.