BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **TAMARRON PROPERTIES ASSOCIATES, LLC,** v. Respondent: **LA PLATA COUNTY BOARD OF COMMISSIONERS.**	**Docket Nos.: 47486, 47487, & 47488**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on April 3, 2007, Karen E. Hart and Debra A. Baumbach presiding. Petitioner was represented by Richard Olona, Esq. Respondent was represented by Michael Goldman, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2002, 2003, and 2004.

The Board consolidated Docket Nos. 47486, 47487, and 47488.

PROPERTY DESCRIPTION:

Subject property is described as follows:

40292 Hwy 550 N, Durango, Colorado
2002 La Plata County Schedule Nos. R005992, R021658, R417146, R422527 & R422528
2003 La Plata County Schedule Nos. R426374, R426375 & R426376
2004 La Plata County Schedule Nos. R426951, R426952, R426953

The subject property is a golf course and residential community formerly known as Tamarron Resort and now known as Glacier Club. It is located approximately 15 miles north of the City of Durango, Colorado.

As of January 1, 2002, the subject property consisted of 682.105 acres with undeveloped land; a semi-private, 18-hole golf course; and improvements including a 77,330 square foot lodge

with offices, restaurants, and events facilities; three support and maintenance buildings; three storage buildings; and a water and sewer treatment plant. Sixteen of the golf course holes were of native soils push-up greens construction. The remaining two holes were of USGA modified sands construction.

For tax year 2002, the level of value date was June 30, 2000. Respondent assigned an actual value of $9,155,790.00 to the subject property. Petitioner is requesting an actual value of $6,568,606.13. Respondent's witness, Mr. David Eckelberry, presented the following indicators of value for tax year 2002 with a concluded value of $12,610,570.00:

Market:	$13,056,000.00
Cost:	$12,610,570.00
Income:	$ 9,411,134.00

As of January 1, 2003, the subject property consisted of 642.105 acres with the same improvements as had existed in 2002. In the summer of 2002, the subject property's golf course was closed and undergoing a reconstruction to rebuild the existing native soils push-up greens and expanding the course by 9 holes using USGA modified sands construction.

The level of value date for tax years 2003 and 2004 was June 30, 2002. For tax year 2003, Respondent assigned an actual value of $9,703,790.00 to the subject property. Petitioner is requesting an actual value of $6,568,606.13. Respondent's witness, Mr. Eckelberry, presented the following indicators of value for tax year 2003, with a concluded value of $12,095,352.00:

Market:	$11,522,128.00
Cost:	$12,095,352.00
Income:	$10,911,134.00

As of January 1, 2004, the subject property consisted of 626.292 acres with a 27-hole golf course, the same existing buildings as in 2003, and a new 24,133 square foot Glacier Club clubhouse. The golf course reopened in the summer of 2004 as a private course.

For tax year 2004, Respondent assigned an actual value of $14,168,930.00 to the subject property. Petitioner is requesting an actual value of $6,568,606.13. Respondent's witness, Mr. Eckelberry, presented the following indicators of value for tax year 2004 with a concluded value of $15,191,579.00:

Market:	$14,363,727.00
Cost:	$15,191,579.00
Income:	$12,411,134.00

Petitioner's Price Allocation Report

Petitioner relied on an allocation of the $9.5 million, 2001 actual sales price of the subject property to establish the value for tax years 2002, 2003, and 2004. Petitioner's witness, Ms. Carolyn Carter, CPA, prepared a Purchase Price Allocation Report. Ms. Carter testified that her role was to allocate the sales price using IRS, accounting, and DPT guidelines, not to determine a value using the three approaches to value. Petitioner concluded to a value of $6,568,606.13 for the subject property. Additionally, Petitioner is requesting the same value for all three tax years.

According to Petitioner's witness, Mr. J. Douglas Shand, Esq., there was a letter of intent submitted September 2001 with a contract entered into in October 2001 that closed on November 19, 2001. The sale included intangible and personal property as well as the real estate. Petitioner believes that the subject sale is the best indicator of value. The Board concludes that the sale was negotiated and closed after the level of value date of June 30, 2000 and therefore cannot be considered for tax year 2002.

Respondent argues that the subject property's sale was not an arm's-length transaction and there were too many unanswered questions regarding the sale circumstances to consider it a good qualified sale. Respondent received conflicting information from many parties involved with the subject property regarding whether the sale was an arm's-length transaction. Petitioner presented sufficient evidence to convince the Board that the subject property sale was not between related parties. There was no convincing evidence to indicate that Mr. Malcolm W. Dunlevie had any ownership interest in either entity at the time of sale or that his actions on behalf of the seller and subsequent contract with the new owner had an influence on the sales price. However, there was conflicting evidence and testimony regarding the subject property's exposure to the open market and an offer to Mr. Dunlevie to become a minority owner of the subject property after the sale.

The sales price included many components: intangibles including density rights, tangible personal property, and real estate. There is conflicting information regarding the allocation of assets. Pages 2 and 3 of Petitioner's Price Allocation Report state that the value of the building improvements, the golf course value, the land value, and the personal property value were all concluded to be different than allocated at the time of purchase. Also, the subject property experienced a reconstruction of the golf holes with an expansion to 27 holes and a change in use from a semi-private to a private golf course. All of these factors cause the Board to give less weight to the actual sales price for tax years 2003 and 2004.

Petitioner did not compare the resulting allocated land value with vacant land sales. The Board believes this would be a critical check for accuracy of the allocation conclusions regarding the real property value. The subject property underwent major changes in physical characteristics after the sale. The property varied in acreage size, the number and construction type of golf holes, the golf course was closed during construction, and a new building was constructed. Due to all of these changes, the value of the subject property would not be the same for each of the tax years in question, yet Petitioner is asking for the same value throughout. Additionally, the property had a destabilized cash flow at the time of sale. Petitioner made an allocation for going concern, yet the Board was not convinced that a buyer would consider the subject's negative cash flow valuable. The Board places little weight on this methodology to arrive at an indicated land value.

Respondent's Market and Income Approach

Respondent's witness, Mr. Eckelberry, presented an appraisal report using all three approaches to value. Mr. Eckelberry did not give much weight to the income or direct sales comparison approach. The subject property's income stream is not stabilized and the subject property's actual income information occurred after the 2004 level of value date of June 30, 2002. Mr. Eckelberry admitted that his income approach was speculative using a projected hypothetical income stream. The direct sales comparison approach consisted of two golf course sales located in the front-range and both sales required large adjustments. The Board agrees that the income and market approaches should be given little weight.

Respondent's Cost Approach

Respondent's witness, Mr. Eckelberry, used a state-approved cost estimating service, Marshall and Swift, to derive a market-adjusted cost value for the subject property for each tax year. Mr. Eckelberry relied on the cost approach to determine the subject property's value. The Board agrees that the cost approach is the most appropriate valuation method for the subject property, considering its condition during all three years of value.

Golf Course Improvements

Petitioner's witness, Mr. Jeffrey M. Monroe of Tax Profile Services, classified the golf course as a midrange Class III, based on its native soils push-up construction; yardage; small tees and greens; and below average, underutilized vertical improvements. The new construction included changes in course layout and routing, and shortening or lengthening some of the holes. Respondent classified the subject golf course as a Class IV Championship course due to its terrain, undulation, bunkers, length of course, and named architect. It is superior to other area courses; the green fees are 30% higher than the other two area courses. Respondent started with a value of $195,000.00 per hole and made downward adjustments for the improvements and hole construction type. Based upon the age and condition of the course in 2002, Respondent applied a depreciation rate of 55% and included economic obsolescence. For portions of tax years 2003 and 2004 the course was in the process of upgrading and out of play. Respondent increased depreciation to 65% including economic obsolescence. Respondent used 40% depreciation for the 9-hole course constructed in 2003 and 2004. Respondent's witness believes his value is supported by the actual rehabilitation and new construction costs reported by Petitioner.

The Board is not convinced Respondent classified the course properly for tax years 2002, 2003, and 2004. As of January 1, 2002 the majority of the holes were of native soils push-up construction. On January 1, 2003 the greens were undergoing a reconstruction to rebuild the existing greens and expand the course by 9 holes of USGA modified sands construction. The new construction was not completed until May 2004. The Board determined for tax years 2002 and 2003 the course should be rated a high range Class III, and a low range Class IV for tax year 2004. However, Respondent accounted for all forms of depreciation and the values Respondent indicated for the golf course improvements do not warrant any further reduction.

Other Improvements

Respondent valued the improvements using Marshall and Swift and considered the utility of the existing lodge. The water and sewer system was valued based on the potential gallons per day capacity. In 2002, the system was operating at 64% capacity. The Special Notice of Valuation in 2004 includes an additional value of $4,321,410.00 for the new construction. Depreciation was applied to the improvements for all tax years. The Board finds Respondent's indicated values for the lodges, maintenance facilities, and water and sewer system reasonable for all three tax years.

Land Value

Petitioner disputes the land classification and believes the development land should be classified as agricultural forest land ("Forest Ag"), as it was from 1993 to 2004. The existing forest plan was not changed to the new ownership name after the sale and Respondent's witness testified that Petitioner was not complying with the plan. Respondent reclassified the subject property to vacant land in 2006 but Respondent believes the land value can be changed for this case as the abatement application allows for review of all classifications as well as valuation.

Respondent's appraisal is based on a market value of all the land; no land was valued as Forest Ag. There are two land values as the golf course land has restrictions. Respondent's indicated value for golf course land was $6,000.00 per acre for tax years 2002, 2003, and 2004. The indicated value for vacant land was $12,700.00 per acre for tax year 2002, and $18,500.00 per acre for tax years 2003 and 2004. Respondent's witness, Mr. Eckelberry, testified that he looked for comparable land sales that were used for agriculture or had little development potential to value the golf course land. The sales ranged from $3,780.00 to $8,750.00 per acre and in size from 250 acres to 1,481 acres.

The issue presented to the Board is whether an assessor can challenge a real property's agricultural classification for prior years by virtue of a taxpayer filing a petition for abatement/refund of taxes for those prior years.

Colorado Revised Statutes ("C.R.S.") section 39-10-114(1)(a)(I)(A) governs petitions for abatement. This statute provides that:

> [I]f 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. The assessor shall make such report if the assessor discovers that taxes have been levied erroneously or illegally. If such taxes have been collected by the treasurer, the board of county commissioners shall authorize refund of the same in the manner provided by law. …[I]n no case shall an abatement or refund of taxes be made unless a petition for abatement or refund is filed within two years after January 1 of the year following the year in which the taxes were levied . . . . '[E]rroneous valuation' shall include

> . . . [a]ny reclassification of property from agricultural land to any other classification of property. . . .

This statute neither authorizes an assessor to revoke a property's classification nor increase the valuation for a property when a petition for abatement is filed. Rather, the statute seems only to govern situations where a taxpayer is entitled to an abatement or refund of taxes. As a result, this statute does not support the position that an assessor may change the classification of agricultural land to a classification resulting in a higher tax bill to the taxpayer.

This conclusion should be compared to the statute governing protests, C.R.S. section 39-5-122(2), which permits an assessor to increase a valuation determination if a taxpayer protests the property valuation. *See San Miguel County Board of Equalization v. Telluride Co.*, 947 P.2d 1381 (Colo 1997). The Colorado Supreme Court in *San Miguel County* found that the power of an assessor to raise a protested valuation is implicit in the plain meaning of C.R.S. section 39-5-122(2), which provides that "[I]f the assessor finds **any** valuation to be erroneous or to be otherwise improper, he shall correct such error." *Id.* at 1384 (*emphasis added*). In contrast, the abatement statute has no similar language.

While the abatement/refund statute does not authorize the change of classification for past years, C.R.S. section 39-1-103(5)(c) appears to unambiguously bar the practice. This statute states, "Once any property is classified for property tax purposes, it shall remain so classified until such time as its actual use changes or the assessor discovers that the classification is erroneous." The Board finds through evidence and testimony that the actual use of the property did not change. Therefore, the assessor cannot change the property's classification until "the assessor discovers that the classification is erroneous."

When interpreting statutes, courts must effectuate the intent of the legislature. *Martinez v. Badis*, 842 P.2d 245, 249 (Colo. 1992). "Courts look first and foremost to the language of the statute itself to discern legislative intent." *Id.* "If the statute is unambiguous and does not conflict with other statutory provisions, the court looks no further." *Frazier v. People*, 90 P. 3d 807, 810 (Colo. 2004). When statutory language is ambiguous, the court may look to other extrinsic factors "such as the statutory context, the consequences of a particular construction, and the legislative history." *Midboe v. Industrial Claim Appeals Office*, 88 P. 3d 643, 644 (Colo. Ct. App. 2003).

Under the statute the assessor should not be able to change the subject property's classification for tax years 2002, 2003, and 2004. The assessor only recently, in the past year, discovered that the subject property's classification is erroneous. The assessor may be able to change the subject property's classification for the current tax year. This interpretation appears consistent with Volume 3 of the Assessors Reference Library section 1.11, "The assessor is prohibited by § 39-1-103(5)(c), C.R.S., from changing a property's classification unless the actual use changes or the assessor discovers that classification is erroneous."

It should be noted that the assessor can consider its knowledge of the property's use in prior years when considering whether real property should be entitled to an agricultural classification <u>for future years</u> where land must: (1) have been used the previous two years and used presently as a farm or ranch and (2) have been classified or have been eligible for classification as agricultural land

during the ten years preceding the year of assessment. *Von Hagen v. Board of Equalization of San Miguel County*, 948 P.2d 92, 94 (Colo. Ct. App. 1997), *citing* Colo. Rev. Stat. § 39-1-102(1.6)(a)(I).

The Board finds Respondent's price for the golf course land at $6,000.00 per acre, and vacant land at $12,700.00 per acre for 2002 and $18,500 per acre for 2003 and 2004 reasonable. However, because the Board concludes that the Forest Ag classification may not be changed in this case, the Board agrees with the land values assigned by the La Plata County Board of Equalization to the land classified as Forest Ag. The values assigned to the Forest Ag land were as follows:

Tax Year	Acres of Forest Ag Land	Value Assigned
2002	272	$9,890.00
2003	242	$9,570.00
2004	242	$14,310.00

Conclusion

After careful consideration of all the evidence and testimony the Board agrees with Respondent that the subject property was correctly valued for tax year 2002. The Board's recalculation of Respondent's cost approach using the Forest Ag land value indicated a higher value than assigned.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property has been overvalued for tax years 2003 and 2004. Upon recalculation of Respondent's cost approach using the Forest Ag land values as assigned by the La Plata County Board of Equalization, the Board concludes the subject property should be valued as follows:

Tax Year	Actual Value
2003	$7,627,922.00
2004	$10,729,270.00

ORDER:

The petition is denied for tax year 2002.

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2003 actual value for the subject property of $7,627,922.00.

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2004 actual value for the subject property of $10,729,270.00.

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

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 C.R.S. section 24-4-106(11) (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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of C.R.S section 24-4-106(11) (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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Colo. Rev. Stat. § 39-10-114.5(2) (2007).

DATED and MAILED this 13th day of December 2007.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Karen E. Hart

Karen E. Hart

This decision was put on the record

DEC 1 2 2007

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

Heather Heinlein

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS