

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>THE COLORADO HORSE PARK,</p> <p>v.</p> <p>Respondent:</p> <p>PROPERTY TAX ADMINISTRATOR.</p>	<p>Docket No.: 47882</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 4, 2008 and October 7 and 8, 2009, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by John M. Evans, Esq. and Matthew R. Stahlhut, Esq. Respondent was represented by Robert H. Dodd, Esq. Petitioner is protesting Respondent’s denial of property tax exemption for tax years 2004, 2005, 2006, and 2007 for the subject properties.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

**7352 & 7321 Bayou Gulch Road and 7255 & 7522 South Pinery Drive
Parker, Colorado
(Douglas County Parcel Nos. 2349-143-12-005, 2349-230-00-018,
2349-144-00-006 & 2349-230-00-007)
(Division of Property Taxation File Nos. 18-01271-01, 18-01271-02, 18-01271-03,
& 18-01271-04)**

The subject properties consist of four parcels totaling 153.81 acres more or less used as an equestrian facility.

The 1.14 acre parcel, parcel number 2349-143-12-005, is a vacant land tract used for road access to the other three properties.

The 25.307 acre parcel, parcel number 2349-230-00-018, has improvements including a 1,200 square foot ranch house, a shed, and two farm utility buildings. The parcel is also used for horse grazing and horse trailer parking. 12.5 acres of this parcel have a deed restriction limiting development to a living history museum.

The 45.342 acre parcel, parcel number 2349-144-00-006, has improvements including a 10,000 square foot office complex with banquet rooms, two indoor horse arenas, a 102-stall horse stable, equipment/hay storage barn, small storage shed, and two apartments. The land is utilized primarily as turn out paddocks for horses, outdoor arenas, and vehicle parking.

The 82.021 acre parcel, parcel number 2349-230-00-007, has several sheds and horse stables, a four acre outdoor riding arena with a bleacher area, seven additional riding arenas, a show office, competitors lounge, and three 100-stall show barns as well as a large parking lot. Additionally there are 62 RV spaces with electric and water supply.

The subject properties were purchased May 17, 2004 by Petitioner from Westward Enterprises, LLC. The incorporator of the Colorado Horse Park was Ms. Helen Kriebel, who was also the managing member of Westward Enterprises, LLC at the time the properties were transferred. Ms. Kriebel is currently on the Board of Directors and the President of the Colorado Horse Park. Ms. Kriebel testified that she has been President of the Colorado Horse Park since its inception, except for 2004 and 2005, when she was unable to serve due to illness.

Petitioner is a not-for-profit Colorado corporation. Article I, section 2 of Petitioner's bylaws, amended March 29, 2005, states, "The Colorado Horse Park, Inc. is organized exclusively for charitable, scientific and educational purposes, more specifically to promote the contributions, history, competition and appreciation of the horse in America." Petitioner's mission statement states, "The purpose of The Colorado Horse Park is to showcase the history and heritage of the West using the horse as the primary teaching tool through hands-on educational programming, museum exhibitions, competitions, boarding and training, recreation, entertainment and therapy for all ages." Petitioner had originally anticipated a museum on site but the museum has not been constructed.

Petitioner filed exemption applications for each of the subject properties on April 6, 2005 requesting charitable property tax exemption under "Charitable Purposes: Non-Residential -- (39-3-108(1)(a))." Petitioner stated on the application that the subject properties have been used for such purposes since October 1999. Respondent issued Final Determination notices on July 23, 2007, denying the applications on the basis that the subject properties were not owned and used for strictly charitable purposes.

Petitioner appealed the exemption denials to the Board. During the course of the appeal hearing on June 4, 2008, Petitioner argued that it also qualified for charitable property tax exemption because it is a qualified amateur sports organization. The June 4, 2008 hearing was continued to allow Respondent to consider this claim. On July 8, 2008, Petitioner filed amended applications with Respondent, including consideration of exemption under "Amateur Sports Organization -- (39-3-108(1.3))." The attachments were also amended and additional attachments were submitted. After the Board's original hearing, Respondent reviewed the application as amended. Respondent issued Final Determination notices on June 17, 2009, denying the applications on the basis that the subject

properties were not owned and used solely and exclusively by a qualified amateur sports organization. The exemption denials were subsequently appealed to the Board which held further hearings on October 7 and 8, 2009.

Petitioner contends that the subject properties are entitled to property tax exemption for charitable use for tax years 2004, 2005, 2006, and 2007. Further Petitioner contends that the subject properties are used solely and exclusively by a qualified amateur sports organization and therefore are presumed to be owned and used for charitable purposes.

Petitioner contends the subject properties are used for amateur equestrian competition and activities including national championships, horse boarding, community equestrian activities such as fun days and trail rides, school and association education days and tours, equestrian official training, and clinics concerning horse breeding, training, nutrition, and horseback riding. There are private trainers that utilize the facilities for their equestrian students. Many of the events held at the subject are conducted by outside organizations that pay fees to Petitioner for their events. Additional activities include community festivals, community organization meetings, school and community organization fundraising events, Weight Watcher meetings, and an occasional wedding. These additional activities comprise 1% or less of Petitioner's budget, according to Petitioner's witness, Ms. Helen Krieble.

Ms. Krieble testified that the subject properties were first known as High Prairie Farms Equestrian Center. It was envisioned that the subject properties would become a major facility for amateur equestrian sports as a multi-discipline facility for equestrian members to learn standards of the sport and to aspire to high level of achievement. Petitioner is a member of the United States Equestrian Federation, which is the national governing body of equestrian sports in the United States, and has close ties to the Fédération Equestre Internationale (FEI). FEI is the world governing body of equestrian sports and is in charge of activities such as the equestrian sports portion of the Olympic Games and the Pan American Games. Both organizations govern amateur sports and set the standards and rules for amateur competition throughout the United States.

The horse is a partner in the competition. Petitioner ensures that the equestrians adhere to the FEI code of conduct for the welfare of the horses by seeing that there are numerous veterinarians on site during competition to make sure the animals are sound and not mistreated. Every place that the horses compete must meet the FEI standards, which are essentially the entire subject properties. The care of the animal is utmost; Petitioner's boarding facilities are to make sure that the horses in the area are able to be trained and receive whatever they need. The FEI code of conduct is in mind for all activities at the subject properties. Even FEI non-sanctioned events are expected to comply.

Petitioner contends that unlike other sports, there is no professional competition. The FEI defines a professional as receiving remuneration for teaching or buying and selling horses. There are professionals that compete, but almost always, 90% of the competitors are amateurs. Ms. Krieble testified that the prize money is a small amount in an expensive sport; it is used to underwrite the expenses for competing. When prize money is awarded, it can vary from as little as \$180.00 for the lower level shows to as high as \$60,000.00 for the Grand Prix. Anyone who wishes to compete is welcome so long as they follow the rules, but if they do not have the proper skills or the horse is not properly conditioned, they will be disqualified.

Petitioner has a membership program for the purpose of attracting interest in the equestrian sport and for those that have a willingness to donate to support the activities of the facility. Membership is not required to use the subject properties.

The trainers using the subject properties are contractors and are paid directly by the students. Each trainer's fee is negotiated between the trainer and the student. The trainers work with both the horse and the rider. Trainers pay for their office space but there is no other charge by Petitioner. There are five to six trainers.

There is a very small independent riding school whose purpose is to attract young people aspiring to be competitors. There are three to six horses that are available only to riders enrolled in the school. The school is a for-profit organization. The school pays a small fee to Petitioner for their office space. The riding schools' students pay fees to the trainers who pay the expenses to keep the horses at the facility. Petitioner is not paid fees, the schools are held at the trainer's discretion, and the trainer sets the fees.

The subject properties can board 102 horses and average around 96 to 98. The boarding cost is paid directly to Petitioner. There are standard boarding fees of either \$700.00 or \$750.00 per month, depending on which section of the barn the stall is located. Petitioner hires people to maintain the horse boarding facility. Horses cannot be boarded unless the owner is with a trainer. Petitioner encourages owners to show at various shows. Petitioner does not make any distinction as to the ability of the horse owner to pay except under extreme circumstances. The only example given was the waiving of boarding fees for six months for a student whose father was out of work. According to Petitioner's witnesses, the boarding operation has never been profitable.

There are many equestrian events throughout the year, including between 25 and 35 shows. Petitioner hosts some of the shows; others are sponsored by outside organizations using the subject's facilities. Most of the shows do not make enough money to cover their events, so Petitioner contributes the difference in part using monies made from profitable shows as well as donations such as hotel rooms. The Colorado Summer Circuit is an annual event featuring three different horse shows, each a week long. It includes stadium jumping competitions, which is an Olympic sport. The shows at the subject properties have competitors at all levels, from beginners to Olympic athletes. There are also other events, such as dressage shows, two day eventing, several combined event training shows, Winter Schooling Shows, and schooling opportunities. A schooling opportunity is a chance to come with your trainer to register to use the cross-country course on the Douglas County open space in order to practice and develop skills.

The largest source of revenue for Petitioner is the competitions, the primary portion of those being fees, with additional revenues from vendors and sponsors, including donated hotel rooms. Boarding income is \$700,000.00 to \$800,000.00 annually.

Petitioner listed charitable activities in 2004 including free and discounted tickets to two horse events for a total of \$79,540.00, free use of meeting rooms and the facility for a total of \$66,465.00, and a \$5,000.00 donation to the Town of Parker.

Petitioner's Volume II, Exhibit S, shows \$43,530.00 of donated tickets to Grand Prix shows and \$14,733.00 of donated tickets to the Halloween with Horses festival. Volume II, Exhibit T shows a donation to RMRPC of \$8,099.49 as a facility donation to an outside event holder.

Petitioner argues that it lessens the burdens of government by providing Olympic equestrian prospects, as well as furnishing a horse park that would otherwise be necessary to be provided by the State of Colorado.

Petitioner also argues that it lessens the burdens of government by managing and insuring the 276-acre Douglas County open space parcel located directly to the south of the subject properties, across Bayou Gulch Road. Petitioner uses the open space for internationally sanctioned cross-country and team riding events and controls use of the property's cross-country course by equestrians. The Board notes that Petitioner's Exhibit E, "License and Use Agreement for the Colorado Horse Park Bayou Gulch Open Space" was not entered into until December 21, 2007, at the end of the relevant years for this hearing.

Respondent contends that the subject properties are not used by a qualified amateur sports organization and do not qualify for charitable property tax exemption.

Respondent contends that in order to be a qualified amateur sports organization Petitioner must be organized exclusively for that purpose and the subject properties must be used exclusively for that purpose. Respondent's witness, Mr. Stan Gueldenzopf, Manager, Exemptions, Division of Property Taxation, testified that the use of the properties was not exclusive based on the classification as agricultural for tax year 2005. The stipulation regarding tax year 2005 signed by Petitioner referenced "horse breeding on the subject property." Respondent's Exhibit 1-1, page 107. To qualify as a ranch, the property must be used "...for the primary purpose of obtaining a monetary profit." Sections 39-1-102(3.5) and (13.5), C.R.S. In order to be a qualified amateur sports organization, "no part of the net earnings of such organization inure to the benefit of any private shareholder or individual." Section 39-3-108(1.3), C.R.S. Petitioner should be coaching or financing the riders in some way. The subject properties are used by for-profit operators such as trainers like Equiventures, Inc. Petitioner does not train or develop the athletes for national and international competition; the for-profit trainers conduct the training on the subject properties.

Mr. Gueldenzopf testified that the bulk of what Petitioner claimed for charitable activities was planning for future uses. Petitioner's primary activity was the day-to-day use of boarding horses, although there were some charitable activities such as giving away free tickets. Respondent's understanding of professional events was not a factor in their decision. To qualify for property tax exemption the properties must not be used for private gain or profit. Respondent argued that the boarding of the horses and the operation of the training by for-profit individuals disqualifies any exemption. Mr. Gueldenzopf also testified that Petitioner discussed future plans to construct a museum on the subject properties, but those plans have not yet occurred. Respondent did not consider whether the use by other organizations qualifies the properties for exemption since the use by Petitioner was not exempt.

Mr. Isak Lode, Property Tax Specialist, Division of Property Taxation, issued a memorandum dated February 2, 2006, Respondent's Exhibit 7, which detailed his findings regarding

Petitioner's initial charitable exemption applications. The memorandum notes on page 7 of 11 that the charitable ticket activities represent less than 1% of the 2004 income and that the majority of the shows are for those already skilled with horses that compete for prize money. The primary sources of income for Petitioner are horse boarding and entry fees. Mr. Lode concluded that Petitioner did not fit into any of the categories of Gray's rule to qualify for exemption, Petitioner's use of the subject was not charitable, Petitioner did not provide a "gift," and therefore the subject properties did not qualify for exemption under Section 39-3-108(1)(a), C.R.S.

Petitioner did not present sufficient probative evidence and testimony to prove that the subject properties met the qualifications for charitable property tax exemption for tax years 2004, 2005, 2006, and 2007.

Section 39-3-108(1), C.R.S. provides, "Property, real and personal, which is owned and used solely and exclusively for strictly charitable purposes and not for private gain or corporate profit shall be exempt from the levy and collection of property tax if: (a) Such property is nonresidential . . ." Further, "Nonresidential property that is owned and used solely and exclusively by a qualified amateur sports organization shall be presumed to be owned and used solely and exclusively for strictly charitable purposes." Section 39-3-108(1.3), C.R.S.

Regarding Petitioner's contention that the subject properties are owned and used by a qualified amateur sports organization, Petitioner did not convince the Board that they met the requirements of Section 39-3-108(1.3), C.R.S. which provides:

For purposes of this subsection (1.3), the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster local, statewide, national, or international amateur sports competition if such organization is also organized and operated primarily to support and develop amateur athletes for national or international competition in sports; except that no part of the net earnings of such organization inure to the benefit of any private shareholder or individual. So long as a qualified amateur sports organization demonstrates that its membership is open to any individual who is an amateur athlete, coach, trainer, manager, administrator, or official active in such sport or to any amateur sports organization that conducts programs in such sport, or both, the organization shall be presumed to provide public benefits to an indefinite number of persons and to directly benefit the people of Colorado whether or not the right to benefit may depend upon voluntary membership in the organization.

In other words, a qualified amateur sports organization "must be 'organized and operated exclusively to foster local, statewide, national, or international amateur sports competition.' If that requirement is satisfied the organization must be 'organized and operated primarily to support and develop amateur athletes for national or international competition in sports.'" *Cherry Creek Gun Club v. Huddleston*, 119 P.3d 592, 594 (Colo. App. 2005).

The Board concludes Petitioner is organized exclusively to foster amateur sports competition and is organized primarily to support and develop amateur athletes for national or international

competition in sports. Petitioner's Amended and Restated Articles of Incorporation state they are "organized exclusively for charitable and educational purposes, and to foster national or international amateur sports competition . . ." The purpose is further detailed to include "[c]onstruct, operate and maintain . . . a horse park in Douglas County, Colorado. Said horse park shall include the following features: (a) an equestrian center, designed with arenas, barns, stalls and offices which accommodate equestrian competitions . . ." The purpose also includes "construction, operation and maintenance of a lecture hall and classroom facility available to the public for educational clinics, seminars, demonstrations and programs described in the following paragraphs." Those educational opportunities include: "[E]ducate the public on the health, care, and welfare of horses, and promotes and protects the interests of various breeds of horse . . . instruct the public on subjects relative to the horse's historic role in the development of the western United States." Petitioner's purpose also includes entertainment, "such as regular (at least annual) agricultural and education fairs and expositions, including horse shows, rodeos, and comparable forms of equestrian entertainment designed to attract the public." Petitioner's bylaws state that Petitioner "is organized exclusively for charitable, scientific and educational purposes, more specifically to promote the contributions, history, competition, and appreciation of the horse in America." Petitioner's mission statement "is to showcase the history and heritage of the West using the horse as the primary teaching tool through hands-on educational programming, museum exhibitions, competitions, boarding and training, recreation, entertainment and therapy for all ages."

The Board concludes that Petitioner's purpose as stated in the articles or incorporation, mission statement, and bylaws is fostering national or international amateur sports competition. The Board is convinced through testimony and evidence that motivation for the inception of the Colorado Horse Park was to design multi-faceted facilities for competitions, education, exhibits, and entertainment. The purposes of the corporation not directly mentioning competitions and development of athletes are directly related to that goal, such as using entertainment to attract new athletes to the sport.

However, the Board concludes that Petitioner does not operate exclusively to foster amateur sports competition and does not operate primarily to support and develop amateur athletes for competition. Petitioner provides facilities to board horses. Petitioner does not conduct the training of the athletes on the subject properties. For-profit trainers pay fees to Petitioner, and the trainers in turn train the clients and directly control the occupancy of Petitioner's barns: no trainer, no boarding. Petitioner's only involvement in training is the renting of office space to the trainers and the boarding of the horses. Ms. Krieble testified that Petitioner encourages clients using their horse boarding facilities to compete, but the Board is not convinced this is a requirement. Ms. Krieble did not have personal knowledge of the operations at the subject property during all of the tax years at issue; therefore the Board is not convinced by her testimony concerning the actual use of the subject properties by the trainers and their clients. The Board was not provided with statistics showing how many of the trainers' clients are using the subject properties for training to compete as amateur athletes and how many of the clients actually compete in amateur sports. Petitioner also hosts various competitions at their facility. The remaining shows are hosted by outside organizations using the subject properties. Petitioner did not present sufficient evidence to demonstrate that these shows exclusively foster amateur sports competitions or primarily support and develop amateur athletes for competition.

The Board is not convinced that the subject properties were owned and used by a qualified amateur sports organization; therefore the subject properties are not presumed to be owned and used for charitable purposes.

Petitioner did not present sufficient probative evidence and testimony to prove that the subject properties were used solely and exclusively for charitable purposes and not for private gain or corporate profit. For-profit trainers pay fees to Petitioner, and the trainers in turn directly control the occupancy of Petitioner's barns and use the subject properties. In addition, the independent riding school using the subject properties is also a for-profit enterprise. Petitioner did not present compelling evidence that these for-profit uses of the subject properties were incidental to charitable use of the property. *See* Section 39-3-106.5, C.R.S. The Board concludes that the subject properties are being used for private gain or corporate profit and therefore do not qualify for a charitable property tax exemption for tax years 2004, 2005, 2006, and 2007.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review thereof 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 is a matter of statewide concern, 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).

Section 39-2-117(6), C.R.S.

DATED and MAILED this 28th day of January 2010.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

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

