BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioners: **ALLEY OOP HOLDINGS, LLC, SAN MIGUEL VALLEY CORPORATION AND BOOMERANG HOLDINGS, LLC** v. Respondent: **SAN MIGUEL COUNTY BOARD OF EQUALIZATION.**	▲
Attorney or Party Without Attorney for the Petitioner: Name: Brad W. Schacht Address: Otten Johnson Robinson Neff & Ragonetti 950 17th Street, Suite 1600 Denver, Colorado 80202 Phone Number: (303) 825-8400 E-mail: bwscha@ojrnr.com Attorney Reg. No.: 18974	**Docket Numbers:38469, 38470 and 38471**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on May 13, 2002, Karen Hart and Judee Nuechter, presiding. Petitioners were represented by Brad W. Schacht and Cynthia Treadwell-Miller. Respondent was represented by Steven J. Zwick and Kevin J. Geiger.

PROPERTY DESCRIPTION:

Subject property is described as follows:

(**San Miguel County Schedule Numbers R1030090550; R1030000026; and R1030000027.)**

Petitioner is protesting the 2001 actual value of the subject property. The subject property consists of three vacant tracts of land located in unincorporated San Miguel County, Colorado.

ISSUES:

Petitioners present the following issue:

1. Whether the subject property is a part of a larger integrated parcel dedicated to ranching as defined in section 39-3-102(1.6), (13.5), C.R.S. and Douglas County Bd. Of Equalization v. Clarke, 921 P.2d 717 (Colo. 1996).

2. Petitioners contend that their tracts of land located north of a highway are part of an integrated parcel of land dedicated to ranching and, as such, should be classified as agricultural property.

Respondent frames the following issues:

1. Whether the Petitioners failed to preserve their appeal by stating the actual value of the subject properties in terms of a specific dollar amount.

2. Whether water diverted upon and traversing the subject properties, and applied through irrigation on other land owned by Petitioners, is sufficient to integrate the subject properties and the larger parcel into one "functional" or "integrated" parcel qualifying as agricultural land as defined in Douglas County Bd. Of Equalization v. Clarke, 921 P.2d 717 (Colo. 1996).

3. Respondent contends that a failure to state an actual value of the real property forming the basis for a petition to appeal deprives the BAA of jurisdiction to consider the matter.

4. Respondent contends that the northern parcel of land at issue does not fit within the integrated parcel exception recognized by case law, and should; therefore, remain classified as vacant property.

PRELIMINARY MATTERS:

1. On April 23, 2002, the BAA consolidated three appeals concerning valuations for the subject property. The parties stipulated as to certain factual and legal issues and presented argument on the legal issues.

FINDINGS OF FACT:

The BAA makes the following findings of fact based upon the parties' Joint Stipulation as to Certain Factual and Legal Issues, and the documentary evidence submitted into the record:

1. Petitioners collectively own approximately 799.82 acres of real property in unincorporated Sam Miguel County, Colorado, which property is located directly west of Telluride, Colorado. The property is owned by Petitioners in the following approximate acreage: San Miguel Valley Corporation (SMVC), 273.848 acres; Alley Oop Holdings, LLC, 273.24 acres; and Boomerang Holdings LLC, 252.732 acres. The property is commonly referred to as the Valley Floor.

2. SMVC purchased the Valley Floor property in 1983. In 2000, the property was divided into 21 parcels of about 35 acres each.

3. SMVC, Alley Oop Holdings, LLC, and Boomerang Holdings, LLC each owns seven of the divided parcels. Alley Oop and Boomerang are affiliated with SMVC.

4. West Colorado Avenue is the only improved vehicular, year-round access into Telluride. The road bisects the Valley Floor property; thereby, creating north and south portions of the property. The road was annexed by Telluride and incorporated into its town boundaries on April 5, 1995. The road is about 150 feet wide with an overall length of about 2.8 miles.

5. The Valley Floor property has been classified as agricultural for the last 17 years and since SMVC's purchase of the property in 1983.

6. During the 2001 reappraisal period, the San Miguel County Assessor reclassified approximately 148.52 acres of the Valley Floor property located on the north side of West Colorado Avenue from agricultural to vacant land. The reclassified property is owned as follows: SMVC, about 74.18 acres (Tract 16); Alley Oop Holdings, LLC, about 37.5 acres (Tract 18); and Boomerang Holdings, LLC, 36.5 acres (Tract 17).

7. The 651.3 acres on the south side of the road remain classified as agricultural and are not the subject of this appeal.

8. The Assessor reclassified the property based on the fact that it had not been used for grazing purposes for the past 8 years.

9. The entire Valley Floor property has been subject to continuous grazing leases with two different ranchers since, at least, 1989. The annual grazing leases provide that the grazing lessee has the sole and exclusive right to possession and use of the entire property for agricultural/grazing purposes only from May to November.

10. However, the reclassified property has not been subject to actual grazing for the past eight years for various reasons. These reasons include safety concerns for both livestock and motorists and fragile wetlands on about 15 to 20 acres of the reclassified property. In

addition, the reclassified property is used to develop and dedicate areas to core irrigation systems to support ranching and grazing on the agricultural property. There are about four head gates and six different ditches and ditch rights stemming from Mill Creek.

11. The reclassified property is available for agricultural/grazing to ensure adequate pasture and as a contingency for dry years.

12. Fences parallel to the south boundary of the road separate the agricultural property from the road and from the reclassified property. There is some fencing parallel to the north boundary of the road that separates the reclassified property from the road and from the agricultural property, but the fencing is not in good repair. Livestock could not be contained on the reclassified property.

13. Tract 16 and Tract 17 of the reclassified property are traversed by Mill Creek, a natural watercourse, which flows uninterrupted underneath the road and is used primarily to irrigate the agricultural property south of the road. SMVC has about four diversion gates and adjudicated rights for the appropriation of water from Mill Creek for use on the Valley Floor property.

14. SMVC's water rights include about six different adjudicated ditches and ditch rights stemming from Mill Creek for irrigating the Valley Floor property. These ditches carry water over Tracts 16 through 18. The water flows southward onto the agricultural property south of the road and the water is deposited to support ranching and grazing on the agricultural property.

15. The water generated and supplied by the appropriation and irrigation on the reclassified property is required for the successful grazing and maintenance of cattle on the agricultural property.

16. Irrigation water is applied to the reclassified property, but no agricultural or livestock products are produced on the reclassified property. Irrigation is also applied to the agricultural property where cattle have consistently grazed under grazing leases since, at least, 1989.

17. The reclassified property is not a parcel of land that is in the process of being restored through conservation practices because it is neither placed in a conservation reserve program established by the Natural Resource Conservation Service pursuant to 7 U.S.C. § § 1 to 5506, nor is the reclassified property subject to a Conservation Plan approved by the appropriate Conservation District pursuant to the terms of subsections 39-1-102(1.6)(a) – (a)(I), C.R.S.

18. If the reclassified property is vacant land, its actual value for real property tax purposes is $2,373,760.00 for Tract 16, $1,168,000.00 for Tract 17, and $1,200,000.00 for Tract 18.

19. If the reclassified property is agricultural land, its actual value for real property tax purposes is calculated according to the statutory formula found in the Colorado Revised

Statutes and described in the Assessors Reference Library, Land Valuation Manual, produced by the State of Colorado's Division of Property Taxation.

20. Mill Creek, an active creek bed, does not originate on the reclassified property, but runs through a small portion of the reclassified property and under the highway to the agricultural property.

21. Although water runs through parts of the reclassified property, the water is directed to the agricultural property for grazing purposes, rather than used for grazing on the reclassified property.

22. The Valley Floor property is divided into a series of tracts that are approximately 35 acres each. These 35-acre plots are spread across four geographically separate tracts that are not contiguous and do not form one parcel.

CONCLUSIONS OF LAW:

1. The BAA has jurisdiction to consider Petitioners' appeal. Petitioners' failure to state the actual value of the subject real property in terms of a specific dollar amount is not fatal to their appeal.

2. Section 39-8-106, C.R.S. (2001), governs petitions for appeal before the appropriate county board of equalization. Respondent asserts that the requirement in subsection (1)(c)(1.5) that the petition state the actual value of the real property in terms of a specific dollar amount is jurisdictional. The BAA notes at the outset that section 39-8-106 pertains to appeals to the county board of equalization and not to appeals before the BAA. Cf. Department of Local Affairs, Board of Assessment Appeals, Rule 6(a), 8 Code Colo. Reg. 1301-1 (petitions to BAA shall be on form prescribed by Board). Moreover, the petitions for appeal filed with the BAA each list a specific amount for what Petitioners believe should be the actual value of the subject property.

3. Nonetheless, the reference in subsection (1)(c)(1.5) to "shall contain" is determined to be directory in nature. In Burns v. Board of Assessment Appeals, 820 P.2d 1175 (Colo. App. 1991), the Colorado Court of Appeals concluded that the statutory thirty-day period imposed on the BAA for rendering decisions was not mandatory. In reaching its conclusion, the court considered both the legislative intent underlying the statute, as well as the lack of damage or prejudice from the delay in the BAA's rendering of its decision. Burns, 820 P.2d at 1178. Here, subparagraph (3) of section 39-8-106 provides substantial protections to the person seeking review of the assessor's determination. For instance, the assessor's failure to provide certain information on a form will not deprive the objecting person of his or her right to appeal to the county board of equalization, including a full, fair, and complete hearing on the person's objections. A person is also entitled to present objections informally. It is therefore clear that the General Assembly intended that persons seeking to protest the assessor's valuation be given every opportunity to have their objections considered. In light of the statutory framework governing petitions for appealing to the county board of equalization the assessor's

determination, the BAA declines to invalidate Petitioner's appeal in this matter based on Respondent's arguments concerning information contained in appeal forms.

4. Both parties base their primary arguments on the Colorado Supreme Court's decision in Douglas County Bd. Of Equalization v. Clarke, 921 P.2d 717 (Colo. 1996). Applying the Clarke decision to the facts underlying this case, the BAA concludes that the reclassified property does not constitute agricultural property and therefore upholds the Respondent's determination.

5. In Clarke, the Colorado Supreme Court concluded that the grazing provision of section 39-1-102(1.6)(a)(I) requires actual grazing in the tax years at issue "unless the reason for the non-use relates to conservation of the land or the parcel is part of a larger unit on which grazing or conservation is occurring." Clarke, 921 P.2d at 720. This case presents the question whether the reclassified property is part of a larger unit on which grazing is occurring. The parties characterize the question as whether the use of the reclassified property constitutes part of an integrated or functional parcel for grazing.

6. The Court noted that we must first consider whether the land at issue "is a segregated parcel that should be treated as a single unit; or whether it is part of an integrated larger parcel." Clarke, P.2d at 722. This question, in turn, requires a factual determination as to "whether the land is sufficiently contiguous to and connected by use with other land or whether it is segregated by geography or type of use from the balance of the unit." Id.

7. Here, the reclassified property and the agricultural property are separated by a highway. In addition, some fencing separates the two areas of land. Although subject to actual grazing in the past, the reclassified property is no longer actually used for grazing. Instead, it is used to help provide water to the agricultural property. The use of the reclassified property as irrigation support for another property is insufficient to integrate it with the agricultural property. The BAA therefore concludes that the reclassified property and the agricultural property do not constitute a functional parcel of land for classification purposes.

8. Any remaining arguments of Respondent need not be considered.

ORDER:

The petition is denied.

APPEAL:

Petitioners may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 13th day of September, 2002.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Karen E. Hart

Judee Nuechter

Judee Nuechter

This decision was put on the record

SEP 13 2002.

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

Penny S. Bunnell

Penny S. Bunnell

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS