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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>JESSE B. & MARGARET AVILA,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p> | <p>Docket No.: 45021</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on November 27, 2006, Debra A. Baumbach and Karen E. Hart presiding. Petitioner, Jesse B. Avila, appeared pro se. Respondent was represented by Michelle Gombas, Esq. Petitioners are protesting the 2005 actual value and classification of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**7910 Greenland Road, Franktown, Colorado
Douglas County Schedule No. 0217517**

The subject property consists of a 35-acre site with a residential dwelling.

1. For tax year 2005, Respondent classified the subject property as residential and assigned an actual value of \$468,078.00. The parties stipulated to a reduced actual value of \$420,000.00 if the Board finds the subject property to be properly classified as residential and not agricultural.

2. Petitioners raise cockatiel birds in a 12' x 20' aviary located in the basement of the dwelling. Petitioners have a Pet Animal Care Facility, Common Bird Breeder license issued by the Colorado Department of Agriculture. The cockatiels are bred and raised for show and some are sold for pets. Petitioners have raised cockatiels since 1990 and have never made a profit from their cockatiel operation.

3. The adult cockatiels are fed sunflower seeds grown on the property, as well as feed purchased from a seed company. Petitioners broadcast sunflower seeds into an area approximately one acre in size, which is watered with a garden hose and pulse sprinkler. The soil is not tilled and the seeds produced are not sold. The water source is a domestic well that serves the residence and allows one acre-foot of outdoor usage. Petitioners' well is not an agriculturally decreed well used for producing agricultural products.

4. Douglas County Zoning officials consider Petitioners' operation to be that of a kennel. Petitioners would have to apply for a special use permit through the planning commission to legally operate the kennel under its current zoning. No special use application has been filed. The subject property is out of compliance with the county zoning ordinances and the current use is considered illegal.

5. To be classified as agricultural, the subject property must qualify as a farm or ranch as defined in Colorado Revised Statutes 39-1-102 (1.6)(a)(I):

Subsection (3.5): "Farm" means a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit.

Subsection (13.5): "Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

6. The subject property is not grazed and therefore cannot qualify as a ranch. Petitioners' sunflower seed growing activities on an estimated one-acre of a 35-acre parcel do not meet the definition of a farm. The Board determined that the sunflowers grown to feed the cockatiels are not a primary use of the entire parcel, rather are an incidental or secondary use. Petitioners' cockatiels are pets, not agricultural livestock as defined in 39-1-102(1.6)(a)(I)(1.1) C.R.S. Cockatiels and any activities related to a cockatiel operation do not qualify a property for an agricultural classification. The primary use of the subject property is for residential purposes.

7. Furthermore, the Board has previously determined that the subject property did not qualify for an agricultural classification for tax year 2003 (Docket 42469). Petitioners admit that no change has occurred in their operation since tax year 2003.

8. Petitioners argue that *Morning Fresh Farms, Inc. v. Weld County Board of Equalization*, 794 P.2d 1073 (Colo. App. 1990) should be applied to their operation, insisting that cockatiels are the same as poultry. *Morning Fresh Farms* relates to agricultural livestock (poultry) producing agricultural products (eggs) and the poultry operation was part of a larger agricultural operation, which produced some of the poultry's food. *Morning Fresh Farms* does not apply to the subject property.

9. Petitioners' cockatiels are not agricultural animals as defined in 39-1-

9. Petitioners' cockatiels are not agricultural animals as defined in 39-1-102(1.6)(a)(I)(1.1) C.R.S. Any activities related to the cockatiels do not qualify the subject property for an agricultural classification.

10. The subject property is properly classified as residential property.

ORDER:

Respondent is ordered to reduce the 2005 actual value of the subject property to the stipulated value of \$420,000.00.

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

APPEAL:

Petitioner 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 7th day of February 2007.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Karen E. Hart

Karen E. Hart

This decision was put on the record

FEB 07 2007

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

Penny S. Lowenthal
Penny S. Lowenthal

