BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **ERIC L. AND MICHELLE L. NABORS,** v. Respondent: **FREMONT COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 48156**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on October 3, 2008, Debra A. Baumbach and MaryKay Kelley presiding. Eric L. Nabors appeared pro se for Petitioners. Respondent was represented by Brenda L. Jackson, Esq. Petitioners are protesting the 2007 classification and value of the subject property.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

Lot 52 Locke Mountain Ranch Filing 4 (35.35 acres)
Fremont County Schedule No. 99504604

Lot 53 Locke Mountain Ranch Filing 4 (35.36 acres),
Fremont County Schedule No. 99504605

The subject properties are adjacent vacant parcels in Locke Mountain Ranch, a development of 77 to 100 lots, some of which have been consolidated by owners. Terrain varies from open prairie to steep hills and rocky outcroppings. The perimeter of the development is partially fenced, and historic use is open range cattle grazing. Residential improvements have been built on ten of the parcels.

Respondent assigned actual values of $1,500.00 per acre ($53,025.00) for Lot 52 and $1,495.33 per acre ($52,875.00) for Lot 53 based on vacant land classification for tax year 2007. Petitioners are requesting agricultural land classification. Should vacant land classification be

determined, Petitioners are requesting a value of $1,357.49 per acre ($47,987.27 for Lot 52 and $48,000.85 for Lot 53).

Classification

Petitioners argued that agricultural land classification has existed since 1994 when the Locke Mountain Ranch Property Owners Association secured a lease with Gary Buderus for open grazing. The lease was sublet to Mark Buderus a few years ago, and was transferred to Alan Gordon in August of 2007. The parties agree that open grazing occurred in 2005 and 2006.

Respondent's witness, the Fremont County Assessor Stacey Seifert, testified that in November of 2006 she was informed by the lessee that the cattle had been permanently removed due to the nearby town of Rockvale's ordinance against open grazing and substantial fines for violation. Reportedly, the lessee's cattle had wandered through unfenced portions of the development into the town. Petitioners provided no contradictory testimony or evidence. The Fremont County Assessor's staff observed no cattle in the development in 2007.

"Agricultural land" is defined by statute as, "a parcel of land . . . that was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices." CRS § 39-1-102(1.6)(a)(I). CRS § 39-1-102(13.5) defines a "Ranch" as a "parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit." Pursuant to *Douglas County Bd. of Equalization v. Clarke*, 921 P.2d 717, 723 (Colo. 1996), "there must be actual grazing on the parcel, as defined in functional terms, during each relevant tax year to qualify for agricultural classification unless the land is subject to non-use for conservation purposes."

The Board is convinced that grazing occurred on the subject parcels in tax years 2005 and 2006. The Board is convinced by the evidence and testimony presented by Respondent that there was not actual grazing on the subject parcels during 2007. A lease without actual grazing does not meet the statutory definition for agricultural land classification. Although the subject properties were used the previous two years as a ranch, grazing did not occur in 2007; therefore they do not qualify for agricultural classification.

Petitioners referenced research into conservation planning but have not placed their parcels in a conservation plan or program. Pursuant to CRS § 39-1-102(1.6)(a)(1), placement in a conservation reserve program or approval of a conservation plan must have occurred for absence of ranching to allow for continued classification as agricultural land.

Valuation (vacant land classification)

Based on the market approach, Petitioners presented an indicated value of $1,357.49 per acre for the subject properties based on the average price per acre for eight comparable sales ranging in price from $28.41 to $2,045.45 per acre and in size from 35.20 to 70.40 acres. The Board notes that averaging is not an acceptable method of valuing property.

Based on the market approach, Respondent's witness presented an indicated value of $1,800.00 per acre for the subject properties. After abstraction for improvements, six sales ranged in price from $1,112.00 to $2,202.00 per acre and in size from 35.20 to 44.05 acres. The witness testified that the subject parcels have good access to power lines, which run continuously along Locke Mountain Road throughout the development. Comparable Sales 1, 4, 5, and 6 also have good access to power and sold between $1,960.00 and $2,202.00 per acre. Respondent's witness, therefore, reconciled toward the upper end of the value range.

Petitioners argued that power lines do not run continuously throughout the development, that the lines from the north gate stop at Lot 50, roughly one-half mile from the subject, and the lines from the south gate stop at Lot 59, roughly nine-tenths of one mile from the subject. Petitioners' least expensive access to power would be connection at Lot 50 if the owner would allow an easement.

The Board is not convinced that power lines are continuous and finds that Respondent's Sales 2 ($1,135.07 per acre) and 3 ($1,173.71 per acre), which do not have direct access to power lines, are more similar to the subject.

Petitioners presented sufficient probative evidence and testimony to prove that the subject properties were incorrectly valued for tax year 2007.

The Board concluded that the 2007 actual value of the subject properties should be reduced to $1,150.00 per acre or $40,652.50 for Lot 52 and $40,664.00 for Lot 53.

ORDER:

Respondent is ordered to reduce the 2007 actual value of the subject properties to $40,652.50 for Lot 52 and $40,664.00 for Lot 53.

The Fremont County Assessor is directed to change 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 CRS § 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 of the Respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS § 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 within thirty days of such decision 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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

CRS § 39-8-108(2) (2008).

DATED and MAILED this 21st day of October 2008.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

MaryKay Kelley

MaryKay Kelley

This decision was put on the record

OCT 2 0 2008

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

Heather Flannery

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