

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>JOHNSON PROPERTIES, LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 48173</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on September 16, 2008, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by William Ebbert, Vice President of Johnson Properties, LLC. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2007 actual value of the subject property.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**14495 East Fremont Avenue, Englewood, Colorado  
(Arapahoe County Schedule No. 2073-30-2-09-011)**

The subject property consists of a vacant land tract containing 4.72 acres in unincorporated Arapahoe County.

Petitioner’s witness, Mark Johnson, President and 50% owner of Johnson Properties LLC, testified that the subject property has been under lease to Fox Ridge Ranch for cattle grazing from February 1, 2005 through February 1, 2008 as shown in Exhibits B and C. Mr. Johnson admits the legal descriptions on the leases are incorrect but insists the leases are for the subject property. Petitioner submitted photographs of livestock grazing on the property, purportedly during the lease period. Mr. Johnson testified that cattle grazed the property in 2005, 2006, and 2007.

Mr. Johnson testified that water for the subject property is supplied by a neighboring contiguous property, which he characterizes as the parent parcel. The subject property was purchased to be a parking lot to the parent parcel, but due to zoning codes, the property cannot be used for that purpose. Therefore it was fenced to contain livestock. Mr. Johnson testified that the subject property has been grass seeded twice. There is no public road access to the subject property; access is via the parent parcel.

Petitioner is requesting a 2007 actual value of \$299.00 for the subject property based on an agriculture classification.

Ms. Cherice Kjosness, Certified General Appraiser with the Arapahoe County Assessor's Office, testified that the subject property was classified through 2006 as agriculture. There was no doubt that one or two animals grazed or were fed on the subject property through 2005. She inspected the property in March 2006, June 2007, and August 2007; she saw no grazing activities on those inspection dates.

Ms. Kjosness testified that for an agricultural classification, the primary purpose must be to obtain a monetary profit using a current agricultural use. The primary purpose of the subject property is to hold as expansion for the parent parcel. However, for property tax purposes, the only classification option would be as vacant land or as agriculture if qualified use by grazing of livestock or raising crops occurred.

Ms. Kjosness, an expert in agricultural classification, testified that she looks for grazing of livestock, palatable fodder, type of animals, and type of use in determining an agricultural classification. A lease or fencing does not qualify by itself; there must have been actual use. Marginal agriculture properties do not lend themselves well to farming or grazing of the property. This includes those properties where it is difficult for a farmer or rancher to utilize a property due to liability issues, not enough palatable fodder, lack of water supply, etcetera. She is familiar with tenant ranchers such as Mr. Barnes of Fox Ridge Ranch, who also leases other parcels in the area. Each parcel must qualify on its own, so tenants usually keep records for feed, seed, fencing, etcetera. She has not seen any of these types of evidence for the subject property, only the leases and pictures. Mr. Kent Wood grazed longhorns on the subject property in the fall and spring 2002-2003 and longhorns were on the property again in 2005.

Ms. Kjosness pointed out that the photograph on page three of Exhibit 1, which shows two steers and one goat on the property, also shows lots of dirt and looked like a feedlot; this photograph was taken after the Friends of Horses vacated the property. The photo on the bottom of page five is the southeast corner of subject property, taken one year after the horses were removed. It depicts debris, which is normally not present for cattle as they are "stupid" and tend to get tangled up and injured. The horses were gone for some time yet there was very little growth of palatable fodder. She changed the classification based on her inspection.

Ms. Kjosness also inspected the property on June 12, 2007 after the protest was filed. The photographs show that the debris was still stacked and there were a lot of weeds. The photograph on page nine of Exhibit 1 shows less palatable forage and less weeds but little grass. The photographs

taken on August 21, 2007 show the fence in poor repair and good kosher weeds, which are good for cattle to eat, but they remain uneaten. There was no evidence of grazing.

Ms. Kjosness testified regarding the aerial photographs included in Exhibit 1. Page 20 is a spring 2004 photo before the drainage channel was reworked. Page 21 is a spring 2006 photo after the drainage channel was reworked. The brown area of the subject is where dirt was deposited from the drainage channel work. Shed panels are shown in the southeast area of the subject. This photo also shows a building in the northeastern part of the neighboring correctional facility property. She pointed out that Petitioner's photos in Exhibit A do not show the shed or panels shown in the 2006 aerial photo. She believes the livestock in Petitioner's photos were the Kent Wood cattle that were on the property in 2002 and 2003, not cattle in 2006. She also pointed out that the shadows and sun position in the photos indicate they must have been taken in the late fall or winter.

Regarding Petitioner's Exhibit E, Ms. Kjosness pointed out that there is no forage, but the shed on the correctional property is visible. She does not believe the cattle had been there very long as there were not many markings in the snow, no trails in the snow, and no cow pies.

Respondent assigned an actual value of \$51,401.00 to the subject property for tax year 2007.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified and valued for tax year 2007.

Respondent successfully impeached Petitioner's photographs. The Board was not convinced that the photographs in Exhibit A were taken on the subject property during the relevant years in question. In addition to the lack of the presence of the correctional facility shed and the sun and shadow positions, the Board also notes that the erosion barrier is missing as well as the shed panels, which should have been visible in the photos if taken after the spring of 2006. Additionally, the Board notes that all of the photographs indicate that little forage was available for livestock consumption. Petitioner indicated that the property had been grass seeded twice. It is typical agricultural practice not to graze land during the same year that it has been seeded, yet Petitioner indicated that grazing had occurred. This further convinced the Board to give less weight to Mr. Johnson's testimony. Petitioner offered no evidence from the lessee to contradict Respondent's evidence or Ms. Kjosness' testimony, or to support its position that the property was grazed during the years 2005 and 2006. Even if the livestock in the December 31, 2007 photographs were present on the property in 2007 for a period of time longer than apparent, the subject property still does not qualify for an agricultural classification due to a lack of use in 2005 and 2006.

Regarding the valuation of the subject property as vacant land, Petitioner presented no evidence to dispute Respondent's valuation.

The Board concludes that the subject property is properly classified and valued as vacant land for tax year 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 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 26<sup>th</sup> day of November 2008.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach  
Debra A. Baumbach

Karen E. Hart  
Karen E. Hart

This decision was put on the record

**NOV 26 2008**

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

Heather Flannery  
Heather Flannery

