

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>RICHARD M. AND KATHLEEN COX,</p> <p>v.</p> <p>Respondent:</p> <p>LAKE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 48305</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 14, 2008, Karen E. Hart and MaryKay Kelley presiding. Richard M. Cox appeared pro se for Petitioners. Respondent was represented by Joseph Fattor, Esq. Petitioners are protesting the 2007 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Tract of land in sections 06-10-80 & 07-10-80, 35.09 acres,
also known as Tract 9, Half Moon Lakes, Schedule No. 11999001-F**

**Tract of land in sections 06-10-80 & 07-10-80, 34.34 acres,
also known as Tract 10, Half Moon Lakes, Schedule No. 11999002-F**

The subject property consists of two adjoining parcels of vacant land located six miles southwest of Leadville. Terrain is flat and barren. The Mt. Massive wilderness area and national forest are visible in the distance.

Respondent assigned the following classification and values for tax year 2007: agricultural classification for one acre of Tract 9 with an actual value of \$48.00 and vacant land classification for the remaining 34.09 acres with an actual value of \$139,769.00 for a total of \$139,817.00; vacant land classification for Tract 10 with a total value of \$171,700.00.

Petitioners are requesting agricultural classification for both parcels with values of \$1,598.00 for Tract 9 and \$651.00 for Tract 10.

Petitioners purchased the subject parcels in 1982. With the intent of harvesting for sale, an estimated 150 trees and bushes were planted in 2000 and subsequently maintained. Cages were installed and the seedlings were watered, fertilized, and weeded. More plantings took place in 2002 to replace those that had died. Maintenance continued throughout 2007. Petitioners estimated that 36 trees and 60 bushes are alive today. Petitioners did no additional planting. Petitioners worked to determine the cause and effect for the loss of trees and bushes and the slow growth rate. There has been no harvest or sale to date.

The plants were irrigated with well water. The Tract 9 well was drilled in 1981 and the Tract 10 well in 1982. Mr. Cox testified that he could legally irrigate one acre of land per well. Respondent reported that the wells were designated as domestic, limiting use to household and lawn watering.

The Assessor's Reference Library discusses tree farms:

Tree farms are typically agricultural operations which plant, cultivate and harvest trees for sale on a wholesale or retail basis. Inputs to the lands, e.g. fertilizer, pesticides or other cultivation activities, are indicators the land is being used as a farm as defined by 39-1-102(3.5), C.R.S. . . .

Tree farms should generally receive agricultural land designation if they plant and grow trees in the soil, cultivate and fertilize the trees, and harvest and sell the trees on a regular basis. The land must also be used for the primary purpose of obtaining a monetary profit as stated in 39-1-102(1.6)(a)(I), C.R.S.

3 Assessor's Reference Library: Land Valuation Manual 5.29 (2006)

The Board concludes that no part of the subject property meets the criteria for agricultural classification. The land is not conducive to a tree farm, and no trees have been harvested or sold. Classification for the total 35.09 acres in Tract 9 and 34.34 acres in Tract 10 should be vacant land for tax year 2007. Even if the Board were to find that the activity on the one acre qualified for agricultural classification, it is not enough to qualify the entire property as agricultural.

One acre of Tract 9 will be reclassified to vacant land for tax year 2007 but will remain valued at \$48.00 as assigned by Respondent as the Board cannot increase the value higher than assigned by Respondent. *See* Colo. Rev. Stat. § 39-8-108(5)(a).

Based on the market approach, Respondent presented two vacant land sales for comparison: a 39.60 acre parcel that sold in August of 2005 for \$100,000.00 or \$2,525.00 per acre; and a 39.60 acre parcel that sold in January of 2006 for \$225,000.00 or \$5,682.00 per acre. The sales are located approximately five to six miles from the subject property and are both barren, non-productive

parcels. Based on the median sales price, Respondent presented an indicated value of \$4,104.00 per acre.

The Board agrees with the market approach and indicated value presented by Respondent for the vacant land. Applying \$4,100.00 per acre to the two tracts results in \$139,769.00 for 34.09 acres on Tract 9 and \$140,794.00 for 34.34 acres on Tract 10. Adding the \$48.00 assigned to the one acre on Tract 9, the total value for Tract 9 is \$139,817.00, the same value as assigned by Respondent. The total value for Tract 10 of \$140,794.00 is a reduction from the value assigned by Respondent.

ORDER:

Respondent is ordered to reclassify the entirety of Tract 9, Schedule No. 11999001-F, to vacant land.

Respondent is ordered to reduce the 2007 actual value of Tract 10, Schedule No. 11999002-F to \$140,794.00.

The Lake County Assessor is directed to change his 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 Colorado Revised Statutes (“CRS”) section 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 section 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.

Colo. Rev. Stat. § 39-8-108(2) (2007).

DATED and MAILED this 28th day of May 2008.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart
Karen E. Hart

MaryKay Kelley
MaryKay Kelley

This decision was put on the record

MAY 28 2008

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

Heather Heinlein
Heather Heinlein

