

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ROGER ERIC LAINE,</p> <p>v.</p> <p>Respondent:</p> <p>LAKE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket Nos.: 48346 & 50456</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 28, 2009, Debra A. Baumbach and Karen E. Hart presiding. Petitioner appeared pro se via teleconference. Respondent was represented by Joseph Fattor, Esq. Petitioner is protesting the 2007 and 2008 classification and actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Lake County Schedule No. 11999000

The subject property consists of a vacant land tract, approximately 35.12 acres in size, known as Tract 8, Halfmoon Lakes. The terrain is relatively flat, has abundant sagebrush and other native brush growing, and there is sparse grass.

The Board consolidated Dockets 48346 and 50456.

Petitioner testified that the subject property is a tree farm pilot project. One acre is planted in trees and about one-fifth of an acre is irrigated by water hose. The business plan is for eventual sale of Christmas trees and firewood. Of the original plantings in 2000, one-half were bushes for elk and for a windbreak. Commercial plantings have not yet begun. Mr. Laine believes it will be approximately 18 years for the trees to mature. He believes 46 trees and 46 shrubs will be available for sale in 2017 when the pilot project ends. There has been no income generated from tree or other

agricultural product sales. Petitioner's neighbors, Rich and Kathy Cox are contracted to water the trees but there is no contract to plant trees or bushes.

Regarding the valuation of the subject property, Petitioner submitted an offer for purchase of his property dated April 26, 2006 for \$6,500.00. Mr. Laine did not accept the offer.

Petitioner is requesting a 2007 and 2008 actual value of \$600.00 to \$700.00 for the subject property, based on an agricultural classification. Petitioner is requesting a value of \$7,000.00 if the subject property remains classified as vacant land.

Respondent's witness, Mr. Howard Tritz, Lake County Assessor, has visited the subject property at least once a year since 1999. There has been little change to the property. Petitioner is working on the property but seems to have little success as a tree farm. There have been no sales of trees or bushes. Mr. Tritz has not observed any new plantings and the existing trees have had little growth. The native bushes are growing better than the plantings by Petitioner.

When Mr. Tritz inspected the subject property on September 20, 2006, there was no change to the tree farm; thirty percent of the trees appeared dead. Only a small area is planted, there is no evidence of routine maintenance, and there is an incompatibility of the use as a tree farm with the soil survey.

There are no adjudicated water rights for irrigation. The well on the property is for domestic purposes which can be used to irrigate up to one acre of land around the property for lawns and shrubbery and for in-house use; it cannot be used for commercial tree farm irrigation. There is little if any irrigation of the trees. There was some evidence of old irrigation; the irrigation system hoses were broken.

Respondent's witness presented an indicated value of \$4,104.00 per acre for the subject property based on the market approach.

Respondent presented two comparable sales with prices of \$100,000.00 and \$225,000.00. Both sales were 39.60 acres in size. No adjustments were made to the sales. The sales are located approximately two miles from the subject property. Mr. Tritz concluded to the median value of \$4,104.00 per acre for the subject property value.

Respondent assigned an actual value of \$135,831.00 to the subject property for tax year 2007, based on 2 acres of agricultural classification and 33.12 acres of vacant land classification.

Respondent assigned an actual value of \$143,992.00 to the subject property for tax year 2008, based on 35.12 acres of vacant land classification.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified and valued for tax years 2007 and 2008.

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 35.12 acres should be vacant land for tax year 2007. Even if the Board were to find that the activity on the two acres qualified for agricultural classification, it is not enough to qualify the entire property as agricultural.

The two acres of the subject property classified as agricultural should be reclassified to vacant land for tax year 2007 but remain valued at \$39.00 as assigned by Respondent as the Board cannot increase the value higher than assigned by Respondent. Section 39-8-108(5)(a), C.R.S.

Regarding the valuation of the subject property as vacant land, Petitioner did not present any sales for the Board to consider. The Board upholds the value assigned by Respondent to the subject property for tax years 2007 and 2008.

ORDER:

The petition is denied.

Respondent is ordered to reclassify the entirety of the subject property to vacant land for tax year 2007.

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 Section 24-4-106(11), C.R.S. (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 Section 24-4-106(11), C.R.S. (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.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 15th day of October 2009.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

Karen E. Hart
Karen E. Hart

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

Heather Flannery
Heather Flannery

