BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **C.P. BEDROCK, LLC.,** v. Respondent: **DENVER COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 49328 & 50567**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on March 13, 2009, Sondra W. Mercier and Karen E. Hart presiding. Petitioner was represented by Barry J. Goldstein, Esq. and Kendra L. Cohen, Esq. Respondent was represented by David V. Cooke, Esq. Petitioner is protesting the 2007 and 2008 classification of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

18401 East 44th Avenue, Denver, Colorado
(Denver County Schedule No. 00211-00-012-000)

The subject property consists of an approximately 37-acre vacant land parcel zoned CMU 20: commercial mixed use.

The subject property was acquired by Petitioner in 1998 as part of a 400-acre purchase. The property was leased for ranching purposes and was classified as agricultural through calendar year 2006.

The City and County of Denver removed the eastern fence on the subject property in the fall of 2005 for the purpose of widening Tower Road. As ranching was no longer possible due to the removed fencing, Petitioner extended an existing lease with Mr. Wayne Miller to farm the subject property; Mr. Miller was already farming other properties for Petitioner.

Work commenced on the subject property for the Irondale Gulch/Highline Lateral IR-2A project around March 2006 through a cooperative effort involving the Urban Drainage & Flood Control District, Denver Public Works and the Town Center Metropolitan District. There was equipment used and parked on the subject property for all of 2006 and a portion of 2007, when the project was completed. Petitioner's Exhibit I shows earthmoving equipment smoothing out topsoil on the subject property on April 20, 2007.

Petitioner's witness, Mr. Charles D. Foster, land developer and Town Center Metropolitan District Manager testified that the ditch *construction* project which crosses the subject property was started in January 2006 and completed in August 2006. The *restoration* portion of the project was completed and accepted as complete in November 2007. The ditch is 80 feet wide and the conduit is 96 inches wide. Mr. Foster testified that a large amount of heavy equipment was involved in the construction of the ditch and the entire subject property was utilized during the project.

Petitioner's witness, Mr. Wayne Miller, has been a full-time farmer and rancher since 1988. He farmed other properties including Petitioner's in 2005, 2006, 2007, and 2008. He also farmed properties contiguous to the subject property, but not owned by Petitioner. The subject property is located in the northeast corner of approximately 600 acres farmed by Mr. Miller. Mr. Miller testified that the ditch affected the south 40% of the subject's 37 acres in 2006, preventing him from farming. Ditch activities included traffic by Nelson Pipeline and other earthmoving equipment which was parked on the northern portion of the subject. In 2005 the other properties of his operation were planted to wheat. He normally does preparation work in March, but in 2006, he could not work the subject property due to the construction equipment and other ditch project activities. During the construction there were heavy equipment tire tracks, two roads, rough ground with large clumps of dirt, and big ditches on the subject property. After the canal was finished there were sink holes which needed to be filled prior to farming. The top soil was stored on the southern part of the subject, below the canal, and needed to be spread on the subject property to allow farming. Respondent's Exhibit 2 photographs show that the construction project was still in process on June 27, 2006 and the land was not ready to farm.

Mr. Miller planted millet in 2007 and wheat in 2008 on the subject property. The wheat subsidy program, USDA Direct and Counter-Cyclical program, required inclusion of the subject property in the conservation program; the entire Miller Farm properties are in the program, including the subject property. Mr. Miller considers the subject property to be part of his overall farm, not a separate part of his farm. Mr. Miller diverted winter wheat to a millet spring crop the following year due to the construction on the subject.

Mr. Miller admits that during 2006, he did not farm the subject property. He made his lease payment in 2006 but could not plant and was afraid to disc as the land would be a "blow-pile." The entire farm has a conservation program that covers all the acreage, whether planted or not. He applied for the conservation plan starting in 2001 when the original leases were signed. However the process was not complete until years later. The program is controlled by Adams County Farm Service Agency. You cannot participate in the wheat Direct and Counter-Cyclical program unless all the farms are involved. Mr. Miller asked to add the subject property's 37 acres to the plan in 2006. The USDA did not change his plan until it was approved by the soil conservation district, which did not issue their approval until 2007.

In 2007, the bulk of the Miller Farm, including the subject property, was planted to millet. He smoothed and disced the subject property in April 2007 once the topsoil was spread. There was wheat growing in 2008.

Petitioner is requesting a 2007 and 2008 agricultural classification with an actual value of $3,000.00 per year for the subject property.

Respondent's witness, Mr. Marc Blank, appraiser for the City and County of Denver testified that he did not inspect the subject property in 2006. Mr. Blank agreed that the subject property is part of a larger 600-acre farming operation by Mr. Miller.

Respondent's witness Mr. Rick Rutt, City and County of Denver Assessor Office Supervisor, testified that he conducted the agriculture review in 2005 and 2006. He was never told the subject property was in a conservation plan. He inspected the subject property in the first week of January 2006, on June 27, 2006 and in December 2006. On his first visit there was no ditch work and no agricultural activities happening with the property, other than there were some stakes and there was no fence along Tower Road. On his June 27, 2006 visit the pipeline was in and covered up, roads were cut in, and there was no equipment on the property. There was no change from his June visit to when he inspected the property in December 2006. The northernmost part of the subject property had access from North Yampa Street. He thinks half of the parcel was undisturbed. Mr. Rutt did not visit the subject property in 2007. He believes each farm must be considered according to its ownership and not according to farmer.

Respondent reclassified the subject property from agricultural to commercial vacant land in 2007. Respondent does not dispute that the subject property was farmed in 2007 and 2008.

Respondent assigned an actual value of $4,031,600.00 to the subject property for each tax year 2007 and 2008.

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

There is no dispute that no farming or ranching activities occurred on the subject property during 2006. Therefore the Board must determine if the lack of activities in 2006 requires a change in classification. There must be actual farming activities on the subject property unless the land is part of a larger agricultural unit where farming or conservation practices have been occurring. *See Douglas County Bd. of Equalization v. Clarke*, 921 P.2d 717, 718 (Colo. 1996).

Respondent argues that the larger farm unit must consist of contiguous properties owned by Petitioner. The Board disagrees. To determine if the subject property is part of a larger agricultural unit the Board looks to "whether the land is sufficiently contiguous to and connected by use with other land to qualify it as part of a larger unit." *Id*. at 722. The lessee, Mr. Miller, has a farming operation that encompasses 600 acres, part of which is contiguous to and includes the subject property. The Board is convinced that the subject property is a part of the larger farm unit of the lessee and there is no requirement that the larger unit must consist of only contiguous properties

owned by Petitioner. The lessee may, as in this case, qualify a property as part of its agricultural unit. There were farming practices occurring on the 600-acre farm in 2005 and 2006. Mr. Miller has enrolled his farm properties, including the subject property and other leased properties, into a government conservation program.

The Board concludes that the subject property, while not farmed during 2006, is in fact a part of a larger farm unit which was actively farmed and enrolled in a government conservation program during 2006. Therefore the subject property qualifies for an agricultural farm land classification for tax years 2007 and 2008.

ORDER:

Respondent is ordered to reclassify the subject property as agricultural for tax years 2007 and 2008, and reduce the 2007 and 2008 actual value to $3,000.00.

The Denver County Assessor is directed to change his/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 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 31st day of August 2009.

BOARD OF ASSESSMENT APPEALS

Sondra W. Mercier

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