

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Nos.: 49050 &
51174**

Petitioner:

H. W. NELSON,

v.

Respondent:

**ARAPAHOE COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on February 17, 2010, Diane M. DeVries and James R. Meurer presiding. Petitioner was represented by Bret Cogdill, Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2007 and 2008 actual value and classification of the subject properties.

Dockets Nos. 49050 and 51174 were consolidated for hearing.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

**2500 East Belleview Avenue, Greenwood Village, Colorado
(Arapahoe County Schedule Nos. 2077-13-2-01-029 and 2077-13-2-01-019)**

The subject is a single-family residential property located at the southeast corner of South University Boulevard and East Belleview Avenue in the City of Greenwood Village, Arapahoe County. The properties are comprised of a 10,066 square foot single-family home on two legal parcels of land containing a total of 11.39 acres. Schedule 2077-13-2-01-029 contains the residential improvements and 10.46 acres of land. Schedule 2077-13-2-01-019 contains the remaining 0.93 acres of land. The original section of the two-story, frame and brick house was constructed in 1911 with a second section constructed in 1922. The two sections were joined circa 1960 and Petitioner purchased the properties in 1969. In addition to the 10,066 square foot living area of the house, there is a small unfinished basement, a three car garage, and a workshop. The properties use a well

for domestic water and have a septic system. In addition, there are Highline Canal water (ditch) rights associated with the properties, and a second well dedicated to irrigation. There are two water detention ponds on the properties. Subsequent to purchase, Petitioner has updated the properties including but not limited to new paint, carpet, windows, and boilers.

Petitioner presented an indicated value of \$2,101,900.00 for the subject properties broken down as follows:

Schedule	2077-13-2-01-029
3.49 Acres Residential Land	\$2,044,000.00
6.97 Acres Agricultural Land	\$6,900.00
Residential Improvements	<u>\$50,000.00</u>
Total	\$2,100,900.00
Schedule	2077-13-2-01-019
0.93 Acres Residential Land	\$1,000.00
Agricultural Land	\$0.00
Residential Improvements	<u>\$0.00</u>
Total	\$1,000.00

Total for Both Schedules	\$2,101,900.00

Petitioner valued the properties as one unit. Petitioner argues that 6.97 acres of the 10.46 acres contained in Schedule 2077-13-2-01-029 have been used for crops since 2004, and that portion of the subject properties should be classified as agricultural rather than residential. Petitioner's witness, Mr. Royce Smith, testified he had farmed the property since 1995 for the purpose of growing, cutting, and bailing of hay. The farming of the subject was conducted under a verbal agreement with Petitioner and no leases were executed for this activity and no receipts were produced at the hearing.

Petitioner also argued that the house suffers from extraordinary physical depreciation resulting from settlement and cracking of the foundation, as well as functional obsolescence resulting from the age and joining of the two original structures.

Petitioner valued the 6.97 acres of agricultural land based on an income approach using an average annual income or yield of 138 bales of hay at \$6.50 per bale capitalized at a 13% overall rate. No market approach or other support was provided for the value of the residential land and improvements.

Petitioner is requesting a 2007 and 2008 actual value of \$2,101,900.00 for the subject properties, and agricultural classification for 6.97 acres.

Respondent presented an indicated value of \$4,625,000.00 for the subject properties based on the market approach and classification as residential.

Respondent also valued the properties as one unit and presented three improved comparable sales ranging in sales price from \$3,850,000.00 to \$12,350,000.00 and in size from 5,356 to 8,133 square feet. Lot sizes ranged from 5.0 acres to 7.35 acres. All three sales were located north of the subject in Cherry Hills Village and all three were large custom homes with years of construction ranging from 1962 to 2002. After adjustments, the comparables ranged from \$4,304,131.00 to \$7,320,140.00 or \$427.59 to \$727.51 per square foot. Respondent's reconciled value of \$4,625,000.00 or \$459.47 per square foot was bracketed by the adjusted comparables.

In addition, Respondent presented 25 land sales to use for comparative purposes for the subject acreage. According to Respondent, these land sales supported a value of \$500,000.00 for the subject's 11.39 acres; Respondent applied adjustments to this indicated land value including a negative 10% adjustment for excess land and a negative 25% for location.

In terms of classification, Respondent argued that no credible documentation was provided by Petitioner to support agricultural classification of the subject properties. There were no leases or receipts presented that supported any type of agricultural use for the primary purpose of obtaining a profit. In addition, there was conflicting exhibits and testimony addressing the historical use of the acreage, as well as irrigation issues for the subject.

Respondent concurs that some physical depreciation and functional obsolescence did exist in the improvements; however, this depreciation and obsolescence was addressed in their adjustment grid. In addition, Respondent's witness testified that pursuant to statute, a market approach must be used to value residential property, and no such analysis was provided by Petitioner.

Respondent assigned an actual value of \$4,705,760.00 and residential classification to the subject properties for tax years 2007 and 2008. Respondent is recommending a reduction in value to \$4,625,000.00.

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

The Board concludes that Petitioner has not provided sufficient probative evidence and testimony to meet the requisite burden to prove the subject properties qualify for an agricultural classification as defined by Sections 39-1-102 (1.3) and (3.5), C.R.S. The Board concludes that there was insufficient evidence to show that the properties were being used for "the primary purpose of obtaining a monetary profit." Further there was conflicting evidence as to the historical use of the properties. Therefore the Board was not convinced that the subject properties were "used the previous two years and presently [are] used as a farm."

After careful consideration of the testimony and exhibits presented in the hearing, the Board agrees that Respondent's recommended value accurately reflects the market value for the subject. In addition, the Board agrees with Respondent that Petitioner has not provided the necessary evidence to support any estimate of value for the residential land or improvements; further Petitioner did not

present sufficient evidence and testimony to show that the value recommended by Respondent, \$4,625,000.00, was incorrect.

ORDER:

Respondent is ordered to reduce the tax year 2007 and 2008 actual values of the subject properties to \$4,625,000.00.

The Arapahoe 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).

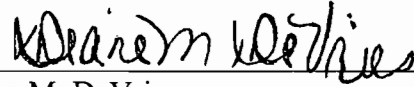
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

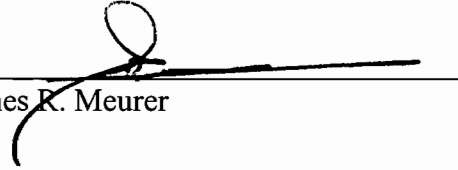
Section 39-8-108(2), C.R.S.

DATED and MAILED this 10th day of May, 2010.

BOARD OF ASSESSMENT APPEALS




Diane M. DeVries



James R. Meurer

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



Heather Flannery