

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 51868

Petitioner:

JERRY AND CAROLYN MC CARTHY,

v.

Respondent:

LAKE COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on January 6, 2010, James R. Meurer and MaryKay Kelley presiding. Carolyn McCarthy appeared pro se for Petitioners. Respondent was represented by Joseph Fattor, Esq. Petitioners are protesting the 2009 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**395 County Road 55, Leadville, Colorado
(Lake County Schedule No. 10301006)**

The subject property is a 2,040 square foot residence built in 2008 on 35.511 acres in the Arkansas River Ranch subdivision. A Deed of Conservation Easement exists on 20.949 of these acres. The fifteen parcels in the development include acreage deeded as conservation easements secured in trade for water rights. Of the fifteen parcels, the subject alone has residential improvements.

Respondent assigned an actual value of \$505,508.00 for tax year 2009: \$240,596.00 for the residence; and \$264,912.00 for the 35.511 acres at \$7,460.00 per acre (2007 median sales price of the fifteen vacant sites in the subdivision remaining constant to present).

Ms. McCarthy argued that the 20.949 acres, which are encumbered by a conservation easement, carry no value because use of the land is prohibited. Petitioners are requesting a value of \$325,000.00 for the improved 14.562 acres based on a market approach by an independent appraiser. With an effective date of August 13, 2009 and comparable sale dates in 2009, the appraisal falls post-base period and cannot be considered.

Respondent's witness presented an indicated value of \$518,636.00 for the subject property, which includes a residential improvement on 35.511 acres. Three comparable sales were presented, ranging in sales price from \$212,000.00 to \$238,000.00, in improvement size from 1,692 to 2,337 square feet, and in size from 0.34 to 0.59 acres. After adjustments were made, the sales ranged from \$515,280.00 to \$524,243.00.

Petitioners presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified and valued for tax year 2009.

Subsequent to the hearing, the Board received a letter from Respondent, dated January 13, 2010, stating that the valuation of Petitioners' land appeared to be controlled by Section 39-1-103(5)(a), C.R.S. The Board agrees. Pursuant to Section 39-1-103(5)(a), C.R.S.:

Land that is valued as agricultural and that becomes subject to a perpetual conservation easement shall continue to be valued as agricultural notwithstanding its dedication for conservation purposes; except that, if any portion of such land is actually used for nonagricultural commercial or residential purposes, that portion shall be valued according to such use.

The Board is convinced that the subject's encumbered 20.949 acres (conservation easement) should be classified and valued as agricultural and the improved 14.562 acreage as residential. The Board is convinced that the encumbrance on the subject's 20.949 acres precludes the same use and enjoyment that exists with the 14.562-acre residential portion of the parcel.

In Respondent's January 13, 2010 letter, Respondent proposes a value of \$352,596.00 for the subject property, with \$112,000.00 allocated to the 35.511 acres and \$240,596.00 allocated to the improvements. The land value includes both the residential 14.562 acres and the 20.949 encumbered, agricultural acres valued at \$81.46 per acre. The Board agrees with Respondent's proposed value of \$81.46 per acre for the 20.949 encumbered, agricultural acres for a total of \$1,706.51.

The Board recalculates Respondent's market approach for the residential land (14.562 acres) and improvements for the subject, concluding to adjusted values of \$359,000.00 (Sale 1), \$354,431.00 (Sale 2), and \$367,963.00 (Sale 3).

The Board concludes to an indicated value of \$360,000.00 for the subject's residential land (14.562 acres) and improvements, and to a value of \$1,706.51 for the 20.949 acre agricultural portion of the parcel.

ORDER:

Respondent is ordered to reclassify and reduce the actual value of the subject property for tax year 2009 as follows: total actual value of the subject property at \$361,706.51, with \$360,000.00 allocated to residential land (14.562 acres) and improvements, and \$1,706.51 allocated to agricultural land (20.949 acres).

The Lake 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).

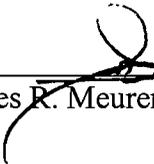
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

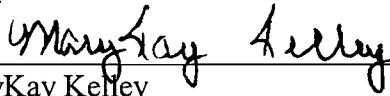
Section 39-8-108(2), C.R.S.

DATED and MAILED this 9th day of March 2010.

BOARD OF ASSESSMENT APPEALS

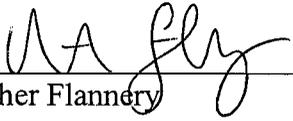


James R. Meurer



MaryKay Kelley

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



Heather Flannery

