

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>OX BOW RANCH COMPANY, LLP,</p> <p>v.</p> <p>Respondent:</p> <p>SUMMIT COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 52251</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 7, 2010, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by K. C. Groves, Esq. Respondent was represented by Franklin P. Celico, Esq. Petitioner is protesting the 2009 actual value and classification of the subject property.

Subject property is described as follows:

**A tract of land located in the SE1/4: Section 36, Township 4 South,
Range 78 West of the 6th P.M., Silverthorne, Colorado
Summit County Schedule No. 1501276**

The subject property consists of a 26.43 acre vacant land parcel located in the Town of Silverthorne, Colorado.

Petitioner is requesting an actual value of \$523.00 for the subject property for tax year 2009. Respondent assigned a value of \$660,750.00 for the subject property for tax year 2009.

Petitioner contends that the subject property has been used in conjunction with another parcel as part of a single ranch operation and should be classified as agriculture. The subject property was not used during 2007 and 2008 due to circumstances beyond Petitioner's control. Respondent contends that the subject property was not actually used for agricultural purposes in 2007, 2008, or 2009, and it does not qualify for an agricultural classification.

Petitioner's witness, Mrs. JoAnn K. Arnold, a partner and manager of Ox Bow Ranch Company, LLP testified that the subject property, as well as a 61.07 acre property owned by the family, is operated as part of their family ranch operation. The two parcels are not contiguous and are located approximately 2.6 miles apart. All of the improvements are located on the 61.07 acre parcel and both parcels are leased separately. The subject property is fenced on three sides, with no fencing along the west side. Petitioner has made an agreement with Angler Mountain Ranch and the Town of Silverthorne to install fencing on the west side of the subject property in exchange for granting a road easement.

The subject property was leased to Keystone Stables for draft horse grazing in 2004, 2005, and 2006. Nine horses grazed the subject property for two months in 2005 and were later moved to Petitioner's other 61.07 acre parcel. In 2006, the neighboring property owner, Angler Mountain Ranch, contacted Keystone Stables and requested that the five horses on the subject property be moved within a two hour period; the horses were moved to Petitioner's 61.07 acre parcel.

Construction on the Angler Mountain Ranch subdivision made access to the subject property difficult. Construction on a new bridge occurred in 2007 and infrastructure was installed in 2008, making access unsafe according to Petitioner. Construction slowed in 2009, and the subject was leased to Gore Range Outfitters for horse pasture use.

Mrs. Arnold testified that the only time the subject property has not been grazed was during the construction project on Angler Mountain Ranch.

Mrs. Arnold testified that the 61.07 acre parcel is leased to a neighboring property owner, High Country Highlands, and is part of a rotation plan that includes both of Petitioner's parcels as well as her daughter's property.

Petitioner's witness, Mr. Joseph E. Maglicic who is the project manager of Angler Mountain Ranch, testified that construction began in March 2007. Access was via an old one-lane concrete bridge that had to be replaced; it had no railings and was unsafe. A two-lane temporary access was installed while replacing the bridge. There were 8 to 20 trucks, 40 to 50 pieces of construction equipment, and 100 to 120 workers on the Angler Mountain Ranch property working six days a week, 12 hours a day, during Summer 2007, hauling materials for the project. There were a similar number of trucks, machines, and workers on the property in 2008.

Mr. Maglicic testified that there was an agreement with Petitioner that there had to be a maintained access easement. He was aware that Ox Bow had to be given access if requested, although Angler Mountain Ranch did not encourage access to the site due to insurance and other concerns. In his opinion, it would have been dangerous to have horses on the subject property during the construction and would have required coordination to get trailers with horses to the subject property.

Petitioner's witness, Jeffrey C. Proctor who is the stables manager for Keystone Stables, leased the 26.43 acre parcel for multiple years: 2004, 2005, and 2006. Mr. Proctor testified that he would not have put his draft horses on the subject property during the construction in 2007 and 2008

as they could have been injured, and it would have been difficult to pull the low clearance horse trailers across the roads.

Petitioner is requesting a 2009 actual value of \$523.00 for the subject property, based on a prior year valuation and an agricultural classification.

Respondent presented a value of \$824,325.00 for the subject property based on the market approach.

Respondent's witness, Michael W. Peterson, a Certified General Appraiser with the Summit County Assessor's Office, presented four comparable sales ranging in sale price from \$725,000.00 to \$3,000,000.00 and in size from 27.368 acres to 51.4833 acres. After adjustments were made, the sales ranged from \$493,254.00 to \$1,092,662.00. Mr. Peterson gave most reliance to Sale 1 as it is the most recent sale, received the least amount of time adjustment, is closest to the subject in proximity, and is most similar to the subject in future development potential.

Mr. Peterson testified that he inspected the subject property in the fall of 2008. He reviewed the documentation submitted by Petitioner, which stated that the subject property had not been used in 2007 and 2008, and it was not intended to be used in 2009.

Mr. Peterson inspected the subject property on September 29, 2009 and walked to the pond, which is located about halfway between the east and west subject property lines. The only observed grazing area was on a neighboring property. There was no evidence of grazing on Petitioner's property.

Mr. Peterson removed the agricultural classification and classified the subject property as vacant land for tax year 2009 as no actual grazing occurred on the subject property during 2007, 2008, or 2009. The subject property was last used for grazing in 2006, and even then, the animals were never specifically contained on the subject property; the horses had free roam of both the neighboring Angler Mountain Ranch property and the subject property. When the new owners purchased the Angler Mountain Ranch property in December 2005, they terminated the previous grazing agreement for their property. Mr. Peterson has never seen horses grazing the subject property but has observed grazing on the Angler Mountain Ranch property.

Mr. Peterson testified that the 61.07 acre parcel owned by Petitioner is classified as agricultural, and a rotation plan was submitted in the late 1990s or early 2000s, which included the subject property, but it also always included the adjacent 192 acre Angler Mountain Ranch property, which has never been classified as agricultural land. The 61.07 acre parcel is leased to High Country Highlands for grazing cattle and is also used for grazing the personal pleasure horses of Mrs. Arnold's family members.

Mr. Peterson acknowledges that the construction on the Angler Mountain Ranch property made it difficult to use the subject property in 2007 and 2008, but he testified that there is no allowance in the agricultural statute for lack of use. Not all of the construction activity occurred near the subject property, and he believes that horses could have grazed the subject property with adequate fencing. No effort was made by Petitioner to address the access issue. Mr. Peterson

believes the horses could have been trailered to the subject property on the weekends or evenings when construction was ceased.

Respondent assigned an actual value of \$660,750.00 to the subject property for tax year 2009.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly classified and valued for tax year 2009.

The Board is not convinced that the subject property is operated as part of a rotation plan in conjunction with Petitioner's 61.07 acre parcel. Each property has been separately leased to separate individuals and generally for differing livestock. The subject property has been leased for horses, whereas the 61.07 acre parcel is generally leased for cattle and occasionally horses.

Regarding non-use of the subject property during 2007 and 2008, the Board is empathetic to Petitioner's difficulty in using the subject property during the construction that occurred on the neighboring Angler Mountain Ranch subdivision. However, once the use of the subject property as part of a larger unit has been rejected, the only remaining exception to the required use of the property, under Section 39-1-102(1.6)(a)(I), C.R.S., is if the parcel is "in the process of being restored through conservation practices." The subject property is not a part of a conservation plan.

After careful consideration of all the evidence and testimony presented, the Board determines that the subject property does not qualify for agricultural classification and valuation as it was not used for agricultural purposes in 2007 or 2008, the two years prior to the assessment year of 2009.

Regarding the valuation of the subject property, Petitioner presented no evidence to dispute the value assigned to the subject property as vacant land. Respondent's witness presented comparable sales which indicate a higher value than that assigned by Respondent.

ORDER:

The petition is denied.

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 22 day of January 2011.

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.

Amy Bruis
Amy Bruis

