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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>C & C AVIATION LLC,</p> <p>v.</p> <p>Respondent:</p> <p>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</p> | <p>Docket No.: 52432</p> |
| <p>ORDER</p> | |

THE BOARD OF ASSESSMENT APPEALS issued a previous Order on this matter on November 29, 2010. On December 8, 2010, Petitioner filed an Unopposed Motion for Post-Order Relief. In the Motion, Petitioner is requesting that the Board amend its Order to 1) indicate that the subject’s land classification for tax year 2009 is Agricultural, 2) omit any reference to Mr. Greg Truit’s testimony, as he was not examined at the hearing, and 3) extend the stipulated Agricultural classification to tax year 2010.

After reviewing a record of the hearing, the Board grants Petitioner’s first two requests, and the Board’s Order has been accordingly modified, as set forth herein, reflecting a classification of Agricultural for tax year 2009 and omitting reference to Mr. Truit’s testimony. The Board denies Petitioner’s last request because the parties make no mention of extending the Agricultural classification into tax year 2010 in the hearing.

This matter was originally heard by the Board of Assessment Appeals on October 19, 2010, Diane M. DeVries and Lyle D. Hansen presiding. Petitioner was represented by Mark W. Gerganoff, Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2007 and 2008 land classification of the subject property.

At the start of the hearing, Respondent’s Counsel, Mr. George Rosenberg, presented a Motion to Dismiss. Board Member DeVries ruled that Mr. Rosenberg was to submit a Brief on the issue by November 1, 2010, with a Response was required from Mr. Gerganoff by November 8, 2010, and that the hearing would proceed on the merits of the case. On October 29, 2010, Respondent withdrew its Motion to Dismiss.

Petitioner and Respondent previously stipulated that the 2009 land classification of the subject was Agricultural; the only issue at the present hearing was the land classification for tax years 2007 and 2008. Both parties stipulated that, should Petitioner fail to show that the subject lots should be classified as Agricultural for tax years 2007 and 2008, the land classification would remain Vacant Land, and the 2009 valuation for Lots 11 and 12 would be \$130,780.00 and \$307,098.00, respectively.

Subject property is described as follows:

**14258 & 14156 East Easter Avenue, Englewood, Colorado
Arapahoe County Schedule Nos. 2073-30-3-02-001 and 2073-30-3-02-002**

The subject property consists of two vacant P.U.D. lots. Lot 11 contains a total of 2.19 acres, and Lot 12 contains a total of 2.35 acres for a combined total of 4.54 acres.

Petitioner's witness, Ms. Deana Sherrick, testified that she and Jim Sherrick own storage condominiums that are located adjacent to the subject parcels, and that at various times during 2007 and 2008, she observed cattle grazing on subject Lots 11 and 12. She had also observed hay, water containers, and a fence around the perimeter of both lots. She testified that she had also observed a corral on the parcel.

Petitioner's witness, Mr. Donald Gallup, who is a principle with C & C Aviation LLC, testified that he had observed cattle, water facilities, and grazing on the subject lots. He testified that seeding over dirt had occurred on low spots on the parcel in 2008. He testified to a Grazing Lease that exists for the subject. The lease term was one year and negotiated annually for the years 2007, 2008, and 2009. He testified that Centennial Lot 1 LLC, Centennial Lot 11 LLC, and Centennial Lot 12 LLC were the lessors, and Doug Barnes, doing business as Fox Ridge Ranch, was the lessee.

Petitioner's witness, Mr. Doug Barnes, who is a principle with Fox Ridge Ranch, testified that he conducts a ranching operation on the subject and on other parcels in the area of the subject. He testified that he employs ranch hands, and he grazes cattle for breeding and consumption. He testified that in 2007 and 2008 there were 15 to 22 cattle grazing on the subject parcel. In the winter, he moves the cattle to another pasture. He used Lots 11 and 12 for grazing for one to two months, usually in March and April, each year. He hauled water to the lots for the cattle, utilizing a water tank on the back of a truck. He testified that in 2007 and 2008, Lots 11 and 12 were used exclusively for grazing only. He testified that a lease rental rate of \$3.00 to \$3.50 per acre would be typical for a non-irrigated grazing lease.

Petitioner is requesting a 2007 and 2008 land classification as Agricultural for the subject property.

Respondent's witness, Ms. Betty Stafford, Arapahoe County Appraiser, indicated that she inspected the subject parcel on various dates between December 10, 2007 and December 22, 2008. She testified that there was no evidence of cattle activity on the subject parcel in 2007 and 2008. She referenced a photo taken on December 10, 2007, which showed no corral or stock

tank and a poorly maintained fence. In another photo dated September 9, 2008, the fence was again poorly maintained fence and there was no evidence of recent grazing. She testified that photos taken on September 9, 2008 further indicate the lack of any grazing evidence on the subject parcel. Her photos dated December 22, 2008 indicate no evidence of cattle activity and a poorly maintained fence. She testified that she believed some of Petitioner's photos were not taken on the subject property, including one photo that showed trees in the background. Her testimony was that there were no trees that close to the subject property.

Respondent assigned an actual value of \$437,878.00 to the subject property and classified it as Vacant Land for tax year 2009.

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

The Board was not convinced that some of Petitioner's photographs were taken on the subject property. The Board noted the change in physical characteristics of the subject parcel in Respondent's photos with a photo date of April 6, 2008, and photos with a photo date of September 9, 2008. The April 2008 photos showed no vegetation on the parcels. The September 2008 photos, taken five months later, showed mature vegetation with no evidence of grazing. The Board concluded that Respondent's photos, taken during site visits from December 10, 2007 through December 22, 2008, showed that the subject property does not qualify for an Agricultural classification because of a lack of agricultural use.

The Board concludes that the subject property is properly classified and valued as vacant land for tax years 2007 and 2008.

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).

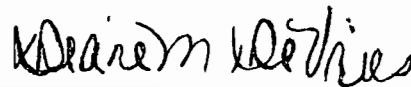
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

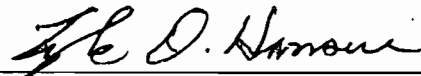
Section 39-8-108(2), C.R.S.

DATED and MAILED this 13 day of December 2010.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries



Lyle D. Hansen

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



Amy Bruins