BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **RITA S. JOHNSON,** v. Respondent: **ARCHULETA COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 53831**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 18, 2010, Sondra W. Mercier and Karen E. Hart presiding. Petitioner appeared pro se. Respondent was represented by Todd M. Starr, Esq. Petitioner is protesting the 2009 classification of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

8001 West Highway 160, Pagosa Springs, Colorado
Archuleta County Schedule No. 569526100045

The subject property consists of an 83.67 acre parcel with a single family residence and an outbuilding. Approximately three acres of the subject property is irrigated grass and one and a half acres were cleared of oak brush in 2007 and seeded with grass for grazing. These areas are grazed by Petitioner's pleasure horses, which Petitioner admitted are used non-agriculturally. The remainder of the property is primarily rugged terrain with minimal meadow areas, a severe slope, clay hills, and Ponderosa trees.

At issue was the classification of the subject property. Petitioner requested an agricultural classification and if the Board granted such classification, an agricultural valuation for tax year

2009. If this Board found that the subject property was properly classified as residential property, Petitioner was in agreement with Respondent's assigned value of $549,500.00.

Petitioner executed a lease with GrassRoots Meats dated May 25, 2007 in the amount of $400.00 per year. The lease allowed for the grazing of a maximum of 12 cows on 118 acres of pasture land which included the subject property. Petitioner testified that she received a $400.00 payment in 2007 and submitted a copy of a check showing payment of $400.00 in 2008. The lease was cancelled at the end of 2008 by Petitioner. According to Petitioner, GrassRoots Meats did not graze her property as it had other properties it grazed its cattle on and did not need to graze her property.

Petitioner admitted no cattle were grazed on the subject property in 2008 or 2009. She was unsure as to whether any cattle were on the property in 2007. Petitioner rode her horses approximately twice a week via a trail to the upper part of her property and admitted she had not seen cattle on her property during 2007, 2008, or 2009.

On February 23, 2009, Petitioner executed a grazing lease on 118 acres, including the subject property, with Mr. Pat Conley for grazing purposes of not more than 25 head of horses, mules, or donkeys. The lease monetary compensation is $400.00 per year. She had seen more than ten of Mr. Conley's horses on her property and the neighboring Elk Park subdivision property. There was, and continues to be, no fencing between the subject property and Elk Park. Mr. Conley leased the Elk Park property through the homeowner association and Mr. Conley's horses would wander onto the subject property at different times during the tax years at question. Although she had no formal agreement prior to 2009 and received no compensation from Mr. Conley, Petitioner denies that Mr. Conley's horses were on her property by trespass. Petitioner was aware of the occasional encroachment of the horses and allowed their grazing to occur. There was no lease in place with Mr. Conley prior to 2009 and until the start of the lease, no compensation was exchanged for the horse grazing activity.

Respondent believes the horses were on the subject property by trespass. Respondent's counsel argued that there was no evidence that Mr. Conley's horses were qualified agricultural animals. However, Respondent's witness, Brian D. MacNeill, a Registered Appraiser with the Archuleta County Assessor's office admitted that the Elk Park property was classified as agricultural due to Mr. Conley's horse grazing. Therefore, the Board finds that Mr. Conley's horses have been accepted as qualifying agricultural animals by the Archuleta County Assessor's office.

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

39-1-102(1.6)(a), C.R.S. states:

> "Agricultural land", whether used by the owner of the land or a lessee, means one of the following: (I) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored

through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment.

39-1-102(13.5) C.R.S. states: "Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purpose of this subsection (13.5), "livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit."

Regarding the cattle lease, although there was a valid lease in place and annual compensation was received by Petitioner, the Board was convinced that the lessee never grazed the subject property in 2007, 2008, or 2009. Without actual grazing taking place, the subject property was not ***used*** for agricultural purposes.

Regarding the horse grazing by Mr. Conley, the Board was aware of no requirement that a lease *must* be in written form for it to be a valid lease for property tax purposes. However, the Board believed there must be, at a minimum, a verbal agreement between the parties and compensation must change hands, either monetarily or through the exchange of goods or services. The Board was not persuaded that such an arrangement was in place with Mr. Conley prior to the execution of the 2009 lease.

Petitioner admitted no cattle grazing occurred on the subject property in 2008 or 2009. Mr. Conley's lease for grazing in 2009 was found to be valid but the Board was convinced that the subject property was incidentally grazed by Mr. Conley's horses by trespass during 2007 and 2008. The subject property was not ***used*** for agricultural purposes during the previous two years of 2007 and 2008, therefore, it did not meet the definition of a ranch as defined in Sections 39-1-102(3.5), C.R.S. and did not meet the definition of agricultural land as defined in Section 39-1-102(1.6)(a), C.R.S. for tax year 2009.

The Board concluded that the subject property was properly classified as residential property and affirmed the 2009 assigned value of $549,500.00.

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

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 24 day of September 2010.

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.

Amy Bruins

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