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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>GORDON S. ROSENBLUM TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p> | <p>Docket No.: 54283</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on July 19, 2010, Diane M. DeVries and Louesa Maricle presiding. Petitioner appeared and was represented by Gregory Rosenblum. Respondent was represented by Writer Mott, Esq. Petitioner is protesting the 2009 actual value and classification of the subject properties.

Subject properties are described as follows:

**6012 West Jewell Avenue and 6014 West Jewell Avenue,
Lakewood, Colorado
(Jefferson County Schedule Nos. 427804 and 427807)**

The subject properties consist of two adjacent lots in the West 6200 Jewell Avenue Subdivision, each with a single family residence and trees offered for sale through Petitioner's tree farm business, Rosenblum Tree Farm. The subject properties were part of a larger tree farm owned by Petitioner that was subdivided into residential lots. All but the subject properties were then offered for sale beginning in 1999. The property at 6012 West Jewell Avenue is a 1.319-acre lot with a 7,653 square foot home built in 1960. The residence has a partially finished basement and an attached garage. The property at 6014 West Jewell Avenue is a 1.324-acre lot with a 3,154 square foot residence built in 1952. This property also has a detached garage. The subject properties were classified as agricultural for more than 30 years until 2009 when they were reclassified as residential.

Respondent assigned residential classification and values of \$1,326,060.00 to 6012 West Jewell Avenue and \$706,060.00 to 6014 West Jewell Avenue for tax year 2009. Petitioner requested

values of \$644,205.00 for 6012 West Jewell Avenue and \$216,382.00 for 6014 West Jewell Avenue based on Respondent's 2007 values for the subject properties with agricultural classification.

Property Classification

Petitioner's witness, Mr. Gregory Rosenblum, testified that the subject properties have been classified agricultural for over 30 years because of their continuous operation as a tree farm. Petitioner presented documents from the Office of the Secretary of State showing Rosenblum Farm Inc. was incorporated in 1994. Petitioner also presented Rosenblum Farm Inc. tax returns, equipment lists, and monthly income and expenses for 2007, 2008, and 2009 as well as the 2008 Colorado Retail Sales Tax Return. Mr. Rosenblum testified about the existing lease of a barn and greenhouse building that continue to be used for tree farm equipment and supplies storage located on a nearby lot that was part of the original, larger tree farm operation. Photos of those business structures, the tree farm equipment, and trees and bushes for sale were presented. The witness testified that the tree inventory is maintained and new trees are added to the properties each year, though they are specializing in selling the larger, more mature trees. Petitioner continues to own water rights and pays Merrit Ditch and Agricultural Ditch assessments to pump water for irrigation from the Ward Lake Reservoir. Petitioner cited Section 39-1-103(5)(c), C.R.S. which states: "Once any property is classified for property tax purposes, it shall remain so classified until such time as its actual use changes or the assessor discovers that the classification is erroneous." Mr. Rosenblum testified that the use of the subject properties has not changed within the last 30 years and more specifically, there was no change during the two years prior to the 2009 valuation of the properties. Therefore, the classification should remain agricultural.

Respondent's witness, Mr. David D. Niles of the Jefferson County Assessor's office, testified that the primary use of the subject properties is now residential. The witness testified there are several hundred trees on the properties but he did not observe any tree inventory planted in rows, so concluded that the tree farm has disappeared. It was his opinion that any tree sales that are made from the properties are incidental and not sufficient to support Petitioner's claim that the tree farm use of the properties has not changed. Respondent contends that although the subject properties were once part of a larger tree farm operation and the houses supported that operation, the primary use changed as portions of the tree farm property were sold. Therefore, the classification change to residential is appropriate.

Petitioner presented sufficient probative evidence and testimony to prove that the subject properties should be classified as agricultural for tax year 2009.

Section 39-1-102(1.6)(a)(I) defines agricultural land as "[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" A farm is defined as "a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit." Section 39-1-102(3.5), C.R.S.

The Assessor's Reference Library, Volume 3, Land Valuation Manual, page 5.28-5.29 discusses tree farms:

Tree farms are typically agricultural operations which plant, cultivate and harvest trees for sale on a wholesale or retail basis. Inputs to the lands, e.g., fertilizer, pesticides or other cultivation activities, are indicators the land is being used as a farm as defined by § 39-1-102(3.5), C.R.S.

...
Tree farms should generally receive agricultural land designation if they plant and grow trees in the soil, cultivate and fertilize the trees, and harvest and sell the trees on a regular basis. The land must also be used for the primary purpose of obtaining a monetary profit as stated in § 39-1-102(1.6)(a)(I), C.R.S.

The Board concludes Petitioner has presented compelling evidence through income and expense ledgers, tax reporting documents, and testimony that tree farm operations continue on the the subject properties for the purpose of making a profit. The tree farm activities include on-going tree planting, cultivation including irrigation, fertilization, and other maintenance, tree sales, and subsequent harvesting. Therefore, the Board concludes that the subject properties meet the definition of a tree farm and the tree farm use of the property has not changed.

Property Valuation

Rather than present a market approach of adjusted comparable sales to conclude to values for the subject properties, Petitioner's witness testified that some of the comparable sales analyzed by Respondent are significantly newer construction than the subject residences, so are not truly comparable properties. Mr. Rosenblum also testified that Respondent's appraisal for the property at 6014 West Jewell Avenue states that the subject property has direct boat access to the lake and Respondent has adjusted the comparable sales upward for that feature, though in fact, the subject property does not have boat access. Therefore, Respondent's value conclusions for both properties are overstated.

For the valuation of the subject property at 6012 West Jewell Avenue, Respondent's witness presented three comparable sales that occurred between October 2006 and February 2007. The comparable residences ranged in size from 4,183 to 6,180 square feet of living area. After adjustments, the sale prices ranged from \$1,199,650.00 to \$1,276,310.00. The most weight was given to the one sale analyzed that occurred within the January 1, 2007 through June 30, 2008 base period. The witness concluded to a value for 6012 West Jewell Avenue for tax year 2009 of \$1,200,000.00, rounded.

For the valuation of the subject property at 6014 West Jewell Avenue, Respondent's witness presented four comparable sales that occurred between October 2006 and September 2007. The comparable sales ranged in size from 2,905 to 6,180 square feet of living area. In addition to adjustments to the comparable sales for changing market conditions, gross living area, finished basement area, and other physical characteristics summarized in Respondent's appraisal, the witness adjusted the sales upward by an unspecified dollar amount for direct boat access from the subject property to a private lake. The witness testified and it was stated in the appraisal report that "It would also be assumed that this lot has a boat right with the lake." In addition, the witness made

upward quality/depreciation adjustments to each sale, but was unable to identify the reason for those adjustments. After adjustments, the sale prices ranged from \$698,540.00 to \$805,310.00. The witness concluded to a value for 6014 West Jewell Avenue for tax year 2009 of \$710,000.00, rounded.

The Board notes that Respondent's appraisal reports contain numerous examples of erroneous narrative text including references to each subject property as "residential vacant land," "retail properties that sold in the neighborhood of the property were analyzed," and that "Three similar office-warehouse buildings were considered to be the best available comparable sales." The appraisal of 6012 West Jewell Avenue also included a Reconciliation and Final Value Estimate section that appears to have been copied straight from the appraisal of 6014 West Jewell Avenue without modification other than the conclusion of value. The two appraisals have only one comparable sale in common. As a result, the reconciliation analysis presented for 6012 West Jewell Avenue is meaningless. Though the erroneous narrative in both reports may be no more than proofreading errors, they raise questions about the credibility of the analyses presented.

The values presented by Petitioner for both subject properties were based on the assessor's 2007 values for the properties, which included the agricultural classification. The Board concludes that this is not a valid basis for the valuation of the properties for a later assessment year because by state statute agricultural lands must be valued by considering their earning or productive capacity and residential property must be valued using the market approach to value, which considers market sales of comparable properties in the current base period.

The Board concludes that the quality/depreciation adjustments made to the sales in the analysis for 6014 West Jewell Avenue should be excluded because Respondent's witness could not explain or justify them.

Petitioner presented sufficient probative evidence and testimony to prove that the subject properties identified as 6012 and 6014 West Jewell Avenue were incorrectly valued for tax year 2009. The Board concludes the value of the improvements on the subject property identified as 6012 West Jewell Avenue should be \$706,740.00, as presented in Respondent's appraisal of this property.

The Board concludes the value of the improvements on the subject property identified as 6014 West Jewell Avenue should be \$213,500.00, calculated as follows: \$216,740.00 as presented in Respondent's appraisal of this property minus \$3,240.00, rounded average quality/depreciation adjustment shown for Sales 2, 3, and 4.

ORDER:

Respondent is ordered to provide the Board with the 2009 actual value of the subject properties' land classified as agricultural within 14 days of the date of this Order.

APPEAL:

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).

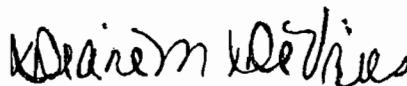
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 24 day of September 2010.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries



Louesa Maricle

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


Amy Bruins