BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 56179
Petitioner: **MOBELISK, LLC,** v. Respondent: **JEFFERSON COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on March 15, 2012, Debra A. Baumbach and Louesa Maricle presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by James Burgess, Esq. Petitioner is protesting the classification of the subject property for tax year 2009 and is requesting an abatement/refund of tax on the property for 2009.

Subject property is described as follows:

18750 State Highway 72, Arvada, Colorado
Jefferson County Schedule No. 166062

The subject property consists of a parcel of land containing 69.883 acres, more or less, located east of Highway 93, south of Highway 72, and north of the Denver and Rio Grande Railroad in the City of Arvada. The parcel is comprised of 48 platted lots and a private road within the Northwest Industrial subdivision. There are ten additional individually owned lots within the subdivision and of those, three have been improved with commercial buildings.

Petitioner is requesting an actual value of $3,300.00 for the subject property for tax year 2009, based on agriculture classification. Respondent assigned a value of $823,500.00, based on a vacant land classification.

Petitioner contends that the subject property qualified for agricultural classification for tax year 2009. The property has had decreed rights to nontributary groundwater since September 2007, in addition to well permits for other than residential purposes. As of 2009, the land had varying

amounts of fencing, stock water tanks and ponds, and small structures used for storage and shelter. It was leased for livestock grazing during 2009, and livestock animals were present on the land as of December 1, 2009. Petitioner contends that the law does not require that livestock be present on the land on January 1, 2009, the assessment date; grazing on the land at any time during the tax year meets the agriculture land qualification requirements. With regard to use of decreed water in conjunction with a farm or ranch use during the tax year, Petitioner further contends that in this case, actual consumption of decreed water by livestock during the tax year is not required. Providing the livestock with the opportunity to use the decreed water is sufficient to meet the test.

Respondent does not dispute the legitimacy of the water rights. However, Respondent contends that when a property has decreed water rights, the use of the land has to be as a farm or ranch on January 1 of the tax year and that decreed water must be used in conjunction with the qualifying land use. Because livestock was not present on the land until December of that year and the water provided to those animals at that time was from a municipal farm water tap, the property did not qualify as a farm or ranch on the January 1 assessment date.

Petitioner cited *Douglas County Board of Equalization v. Clarke*, 921 P.2d 717, 723 (Colo. 1996), in which the Supreme Court concluded that "there must be actual grazing on the parcel, as defined in functional terms, during each relevant tax year..." Based on *Clarke*, Petitioner contends that having livestock grazing on the property in December of the tax year meets the grazing requirement.

Petitioner presented testimony of Roger Dewey, the sole owner of Rimrock Land & Cattle, LLC (Rimrock), which leases the subject property for grazing livestock. Mr. Dewey testified that intermittent work began in 2005 to repair existing fencing at the property and to extend the fencing to enclose approximately 68 acres of the land in order to eventually allow grazing on the property. The remaining land area of about 2 acres, more or less, is not fenced, but is used in conjunction with the 68-acre agriculture operation. The witness testified that the subject property is suitable for year round grazing. Mr. Dewey testified that he grazes livestock on the land for the primary purpose of obtaining a monetary profit. The livestock are for his own use and some animals are sold. In some cases, he has given meat from slaughtered livestock to workers in lieu of cash payment for services received.

The grazing lease between Petitioner and Rimrock, dated December 1, 2008, was presented as evidence. Mr. Dewey testified that although the lease was initially signed by both parties on December 1, 2008, it was signed a second time on December 14, 2009 because the work to fully fence in the majority of the land was not completed until late 2009 and he was unable to release cattle on the land until the fencing was completed. Mr. Dewey testified that the first two livestock animals were delivered to a five-acre fenced area on the property on December 1, 2009. A State Board of Stock Inspection form dated December 1, 2009 and photographs of the two animals on the site were provided as support. Four calves were also brought to the property in mid-December 2009. The witness testified that the water used for the animals in December 2009 was from a municipal farm water tap, not from a well on the land. Other than the animals he brought to the property in December 2009, Mr. Dewey testified he was aware of only one other time livestock had been present on the land during 2007 through 2009. A rancher was allowed to keep some cattle on the land

without a lease for approximately one month in the fall of 2008. Mr. Dewey testified that the water provided to those animals was not pumped from the well on the subject property. To the witness's knowledge, there were no crops grown on the subject property in 2007, 2008, or 2009. The witness testified that he did not have livestock grazing on the subject prior to December 2009 and was not using the subject property as part of a larger agriculture or grazing operation in 2008 or 2009. The witness testified that he did not own any livestock in 2008, and in 2009, he owned only the six animals that were brought to the subject property in December that year.

Richard Loesby, sole owner and manager of Mobelisk, LLC testified for Petitioner and presented evidence of the purchase of grass seed, equipment, and supplies, and invoices for labor during 2005 to 2009 for improvements made to the subject property to prepare the land for grazing. Mr. Loesby testified that the lease to Rimrock was the only lease executed during 2005 to 2009. Prior to the Rimrock lease, the witness did not have informal agreements with ranchers in the area allowing use of the land for grazing, though he did not tell anyone to keep livestock off the property. Mr. Loesby testified he was unaware of any livestock present on the property on January 1, 2009. Mr. Loesby testified that having decreed water rights alone qualifies the subject property for agriculture classification.

Respondent contends that the property in this case does not meet the requirements for agricultural classification for 2009 under Section 39-1-102(1.6)(a)(IV), C.R.S. which states:

> "A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, if the owner of the land has a decreed right to appropriated water granted in accordance with article 92 of title 37, C.R.S., or a final permit to appropriated ground water granted in accordance with article 90 of title 37, C.R.S., for purposes other than residential purposes, and water appropriated under such right or permit shall be and is used for the production of agricultural or livestock products on such land."

Respondent also cited the Assessor's Reference Library (ARL) as the source the Assessor must rely on for the qualifying agriculture criteria that must be met. According to the ARL, Land Valuation Manual, Volume 3, 1-89 Rev. 1-12, pages 5.22 and 5.23, with specific regard to land with decreed water rights: "Even though the "used the previous two years plus current" provision pursuant to § 39-1-102(1.6)(a)(I), C.R.S., does not apply to this category, the property must be used as a farm or ranch on the assessment date and have a documented decreed water right in order to receive the agricultural designation."

Tammy J. Crowley, an appraiser with the Jefferson County Assessor's Office, testified as witness for Respondent. Ms. Crowley testified she has visited the subject property multiple times since 2005. Ms. Crowley testified that when she inspected the property in the fall of 2009, the approximately 68-acre main portion of the land was not yet fully fenced and she did not observe any farming or ranching activity. Ms. Crowley testified that the subject property did not qualify for agricultural classification in 2009 because a property with decreed water rights must be used as a farm or ranch on the assessment date, which in this case was January 1, 2009. Also, the decreed

water must be used in conjunction with the farm or ranch use as of the assessment date. The witness testified she would consider a qualifying use of the land beginning after January 1 during the tax year only if the land did not have decreed water rights. Because the property does have decreed water rights, the fact that livestock was present on the land in December 2009 does not meet the qualification for agricultural classification. Also, the use of municipal water for the livestock at that time does not meet the requirement for use of decreed water.

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

"Under the applicable statutory scheme, taxpayer [has] the burden of proof to show any qualifying uses of [its] land in the relevant years in support of [its] claims for agricultural classification." *Hepp v. Boulder County Assessor*, 113 P.3d 1268, 1270 (Colo. App. 2005).

In *Clarke,* the Supreme Court concluded that "We find no indication in the statutory text of sections 39-1-102(1.6) and (13.5) to indicate that the legislature intended to broaden the meaning of the phrase "use for grazing" to include parcels that the taxpayer intended to use for grazing, but did not. The taxpayer's subjective intent to use the land is not relevant for ad valorem tax classification purposes."

Based on the testimony and other evidence presented, the Board finds that the subject property was not used as a farm or ranch during the two years prior to tax year 2009. Relying on *Clarke*, the Board concludes that Petitioner's activities between 2005 and 2009 to prepare the land for later grazing does not meet the qualifying criteria for agricultural classification. Based on the testimony of Petitioner's witnesses, the Board finds that at the use of the subject property on January 1, 2009 was not as a farm or ranch and the property was not part of a larger functional agricultural unit. Further, according to testimony by the Lessee, the decreed water appropriated was not used for the production of agricultural or livestock products on the land in 2009. The Board finds that sufficient evidence was presented to show that livestock was grazing on the land in December 2009. However, the Board finds that in the *Clarke* and *Mission Viejo Business Properties* cases, no indication was given that any of the land involved had decreed water rights. Therefore, Petitioner's claim, citing those cases, that grazing at any time during the tax year qualifies the property for agriculture classification is not on point in this case.

The Board has relied on the plain language in the ARL which states that in the case of property with decreed water rights: "...the property must be used as a farm or ranch on the assessment date...". Therefore, the Board concludes that the subject property does not qualify for agricultural classification for tax year 2009.

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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 4th day of April, 2012.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Louesa Maricle

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

Milla Crichton

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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