

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>KENNETH H. HUTCHESON,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>JEFFERSON COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 56863</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on May 17, 2011, James R. Meurer and Diane M. DeVries presiding. Petitioner was represented by Victor F. Boog, Esq. Respondent was represented by David Wunderlich, Esq. Petitioners are protesting the 2010 classification of the subject property.

Subject property is described as follows:

**9040 Brumm Trail, Golden, CO  
Jefferson County Schedule Nos. 044332 and 143501**

The subject property consists of two parcels of land: one which includes Petitioner's residence and is 2.2 acres and an adjacent contiguous parcel of 1.32 acres. The Board viewed these parcels as being one unit. These parcels are located within the Blue Mountain Estates Subdivision (Blue Mountain). Blue Mountain is located west of Highway 93 and south of Highway 72 and consists of about 148 parcels and 118 residential homes. The area is best described as a box canyon bordered by two ridges that surround the valley. The east ridge has an elevation of about 7,120 feet, and the west ridge has an elevation of about 7,520 feet. The U-shaped valley has only one entrance off Highway 72. There is grazing on the east and north ends of the valley along the railroad tracks and on the west ridge.

Petitioner is requesting an agricultural classification for the subject property for tax year 2010, as it is part of an integrated larger parcel. Respondent believes that the subject property is a segregated unit and classified the property as residential for tax year 2010.

Dwight Berryman, President of the Blue Mountain Homeowners Association, testified that in 2000 there was one master lease with Mr. William (Bill) Hogan for the purpose of grazing cattle and each homeowner in Blue Mountain signed an addendum grazing lease if they chose to participate in the master lease. Ninety percent of the Blue Mountain population participated in Mr. Hogan's grazing and haying operations.

Mr. Berryman testified that usually the cattle graze from the railroad tracks east of the east ridge in the spring and graze the west ridge in the fall.

There is a team of four men that began the grazing program and is involved in the cattle care. The residents tend to the cattle by maintaining and patrolling fencing; painting the cattle guard; supplying water, water tanks, and salt licks; and helping find lost cattle by communicating via an email system that contains the e-mail addresses of over 160 residents.

Mr. Duane Harkwell, Fire Marshall and resident of Blue Mountain, testified as to the benefits of grazing the area east of east ridge and the railroad tracks. Grass that is grazed is shorter and minimizes fire risks.

Mr. Kenneth Hutcheson, owner of the subject property, presented an exhibit containing 12 pages of undated pictures of cattle grazing. *See generally* Pet'r Ex. 7.

Mr. Hogan testified that his cattle operation encompasses 4,606 acres, 700 acres of his own land and another 3,906 acres, which he leases from a variety of owners, including owners in Blue Mountain. Mr. Hogan testified that he has grazed his cattle in Blue Mountain each and every year since 2000 with the exception of 2009. Mr. Hogan did not have his cattle graze east of the east ridge and the railroad tracks in the spring. In 2009, Mr. Hogan intended to transport his 100 pairs of cows/calves into Blue Mountain in the fall because that was when the area had the best grass. However, due to heavy snow precipitation in the fall, he was unable to graze the subject property or any of the parcels within Blue Mountain. In 2009, the subject property was not in a conservation plan. *See also* Pet'r Closing Argument, pg. 2.

Mr. Hogan testified that he believes the subject property, as being part of Blue Mountain, is part of a larger functional agricultural unit - Mr. Hogan's entire 4,906-acre cattle operation. *See generally* Pet'r Ex. 12. Mr. Hogan stated that grazing occurred on his home ranch in 2009.

Petitioner acknowledged that grazing did not occur on the subject property or in Blue Mountain in 2009. However, Petitioner contended that the subject property qualifies for agricultural classification because grazing occurred on Mr. Hogan's home ranch in 2009, which was part of a larger functional agricultural unit, Mr. Hogan's cattle operation.

Petitioners are requesting an agricultural classification for the subject property for tax year 2010.

Ms. Tammy Crowley, Agriculture Appraiser for the Jefferson County Assessor's Office, presented her report on agricultural classification of the subject property.

In late 2009, the Jefferson County Assessor's staff confirmed with the lessee/rancher that cattle were not placed in Blue Mountain due to the weather, not needing the land due to plenty of grasses on other lands, and concerns with the cattle guard. As the photos show, there is good grazing land located within the valley. The surrounding areas are steep, treed, and have rock outcroppings. A majority of the land in the valley still has an agricultural use classification, but these lands are used and leased by another rancher for agricultural purposes.

Upon inspection by the Assessor's office, the area in front of the home appeared to have been mowed to prevent timber rattle snakes from coming too close to the home. The remaining land was left with natural grasses. There was no evidence of past or recent grazing during this inspection. There was no grazing on these parcels during 2009, as stated by Mr. Hutcheson and confirmed by Mr. Hogan. The last dated photos of cattle on property were taken in 2006. The subject property is not contiguous to Mr. Hogan's home ranch, as it is about 3.34 miles to the southwest as the crow flies. The subject property was not in the process of being restored though conservation practices.

Parcels within Blue Mountain are owned individually, many with homes on them. They were developed and sold for private residential purposes. A protective covenant on Blue Mountain prohibits any animals on Blue Mountain other than "two dogs, two cats, and two horses... as pets only, and not used for commercial purposes." Resp't Ex. A, Addendum C, ¶ 10. While Blue Mountain area may be contiguous within itself, the uses vary from parcel to parcel, with some owners leasing their land to one of three ranchers (including Mr. Hogan) and others using the parcels for residential purposes only.

Ms. Crowley testified that a rancher grazing in and around Blue Mountain would require approximately 35 acres per every cow/calf pair per year. For Mr. Hogan's 100-pair operation, he would need about 3,500 acres of land to graze, which is less than the 4,606 acres he currently uses.

In contrast to Blue Mountain, most of the land leased by the rancher for grazing purposes are large parcels of land owned by one person/business and are vacant land properties or have minimal structures.

Respondent classified the subject property as residential for tax year 2010.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly classified for tax year 2010.

The statutory definition of agricultural land is "a parcel of land...that was used the previous two years and presently is used as a farm or ranch...or that is in the process of being restored through conservation practices." Section 39-1-102(1.6)(a)(I), C.R.S. The statutory definition of ranch is "a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit." Section 39-1-102(13.5), C.R.S; *see also Douglas County Board of Equalization v. Clarke*, 921 P.2d 717, 721 (Colo. 1996). Further, a taxpayer's subjective intent to use the land for grazing is not relevant for classification purposes. *Clarke*, 921 P.2d 724.

Petitioner's witness, Mr. Hogan, testified that, while he intended to graze Blue Mountain, neither the subject property nor Blue Mountain experienced actual grazing on the subject property during 2009 and were not part of a conservation plan. *See also* Resp't. Ex. A, Addendum A. Accordingly, when looked at as its own parcel, both the subject property and Blue Mountain do not qualify for agricultural classification for 2010 because they were not used for grazing purposes over the previous two years and not part of a conservation plan.

Petitioner argues that the subject property should be agricultural because it is part of an integrated larger parcel on which grazing or conservation practices occurred during 2009.

The *Clarke* court enumerated that, in defining what operates as a functional parcel for the purpose of determining whether a property is a segregated parcel or part of a larger integrated parcel, the determination is "controlled by whether the land is sufficiently contiguous to and connected by use with other land to qualify it as part of a larger unit or whether it is a parcel segregated by geography or type of use from the balance of the unit." *Clarke*, 921 P.2d 722. The *Clarke* court further stated that "the [Board] should take into account the physical characteristics of the rancher's property such as the location of natural boundaries like rivers or bluffs and the location of man-made boundaries like fences" and it did "not read the statute to permit an entire ranch consisting of numerous contiguous and non-contiguous pieces of land to be classified as one 'parcel.'" *Id.* at 723.

Based on the evidence and testimony presented, the Board finds that the subject property is a segregated parcel and is not part of an integrated larger parcel consisting of Mr. Hogan's entire cattle operation. First, the grazing that occurred in 2009 was on Mr. Hogan's home ranch, which is non-contiguous with Blue Mountain or any of the properties comprising Mr. Hogan's cattle operation. In order for Mr. Hogan to graze Blue Mountain, he needed to haul the cattle because Blue Mountain is separated by natural and man-made boundaries, including ridges, fences, and cattle guards.

Furthermore, the Board was not convinced that the subject property was sufficiently connected by use to Mr. Hogan's entire cattle operation in 2009. The Board finds that the subject property's principal, and only, use was residential because grazing did not occur. In 2009, the subject property was part of a residential subdivision that was physically separated by distance, natural boundaries, and man-made boundaries from Mr. Hogan's home ranch. Accordingly, the Board finds that the subject property is not part of a larger integrated parcel (Mr. Hogan's cattle operation) and should be considered segregated; an agricultural classification is improper.

## **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.

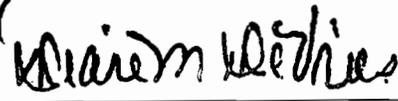
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

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

**DATED and MAILED** this 29 day of July 2011.

**BOARD OF ASSESSMENT APPEALS**

  
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James R. Meurer

  
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Diane M. DeVries

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

  
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Amy Bruins

