BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 57682
Petitioner: **MARIA ISABEL CHAVEZ,** v. Respondent: **DOUGLAS COUNTY BOARD OF COMMISSIONERS.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 27, 2012, Debra A. Baumbach, Brooke B. Leer, and Louesa Maricle presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the classification and the 2010 actual value of the subject property.

Subject property is described as follows:

5435 S. Kelly Court, Littleton, CO
Douglas County Schedule No. R0432558

The subject property is an agricultural and industrial mixed-use property. The total site is 36.99 acres. Improvements include a 5,000 square foot metal industrial storage building with concrete slab and asphalt parking area.

Petitioner is requesting that 31.99 acres or more of the subject site be classified as agricultural use with the remaining five acres or fewer and storage building be classified as industrial use. Petitioner contends that the storage warehouse has been overvalued.

Respondent reclassified 26.99 acres from agriculture to vacant land for tax years 2009 and 2010, with five acres classified as agricultural use (not in dispute in this case) and the remaining 5 acres of the site and storage building classified as industrial use.

MOTION TO DISMISS:

Respondent filed a Motion to Dismiss the valuation portion of the case on the grounds that no "unusual conditions" arose during the 2010 intervening tax year, or, in the alternative, to limit valuation evidence to whether "unusual conditions" within the meaning of C.R.S. Section 39-1-104(11)(b)(I) arose during the intervening year. This motion was heard by the Board in conjunction with the scheduled docket hearing on August 27, 2012.

Petitioner's response that the motion should be denied relied on *Weingarten v. Board of Assessment Appeals*, 876 P.2d 118, 120-121 (Colo. App. 1994), which held that:

> "[R]egardless of any previous year's valuation or the lack of any "unusual conditions," a taxpayer has the statutory right to challenge a property tax valuation for each tax year, including the second year of a reassessment cycle, under the protest and adjustment procedure, including possibly through de novo evidentiary proceedings before the BAA."

In deciding this motion, the Board finds no statutory authority to deny Petitioner the right to protest the property tax valuation for the 2010 intervening tax year. The motion is denied.

DOCKET HEARING:

Petitioner contends that 31.99 acres or more of the subject property qualifies for agriculture classification because it has a well permit, No. 246716, issued December 24, 2002, which qualifies the property for agriculture classification in the first year of use as a farm or ranch without having to meet the two prior years plus current year requirement. Petitioner contends that the well permit does not expire because a well was constructed on August 7, 2003, a pump installed, and a Statement of Beneficial Use was filed November 18, 2010 in accordance with Section 37-90-108, C.R.S. Because the permit does not expire, it is a final permit and meets the statutory requirements in Section 39-1-102(1.6)(a)(IV), C.R.S.

Petitioner contends that the industrial building improvements were over valued and presented excerpted pages listing cost statistics for storage warehouses from Marshall and Swift, a state approved cost estimating service, as support. Mr. Rigoberto Chavez testified on behalf of Petitioner that a new fence was constructed in 2012 around the building and that the area within the fence is 94,000 square feet, not the five acres Respondent has allocated to the commercial property. Mr. David Chavez testified that the livestock on the property can walk across the additional land area included in Respondent's five acres because it is not fenced, but that area does not have any grass so cannot be used for grazing.

Petitioner is requesting that 31.99 acres or more of the subject property should be classified agriculture and valued at $31 per acre and that the five acres or fewer associated with the industrial use plus the improvements should be valued at a total amount of $220,000. Based on Petitioner's

quoted figures, the Board finds that Petitioner is requesting a 2010 actual value of $220,991.69 for the subject property.

Respondent assigned the adjudicated value of $967,915 for tax year 2009 to the subject property for the intervening tax year 2010, as determined by the BAA in Docket 55541. Respondent contends that the 26.99 acres classified as vacant land does not qualify for agriculture classification for tax year 2010 because it did not meet the qualification as grazing land for 2008 and 2009 plus 2010 set forth in Section 39-1-102 (1.6)(a)(IV), C.R.S.

Respondent's witness, Steven W. Campbell, a state licensed appraiser with the Douglas County Assessor's Office, testified that according to statute, the property must have been used for a qualifying agricultural use the previous two years, 2008 and 2009, plus the 2010 year to qualify for agricultural classification for the 2010 tax year. The witness testified that Petitioner provided insufficient evidence to document agricultural use of the 26.99 acres between 2006 and 2009. Therefore, the 26.99 acres does not qualify for agriculture classification. The witness testified that Petitioner's claim that the permit for the existing well removes the two years plus one year requirement is invalid because the well permit document does not show it is a final permit to appropriated ground water granted in accordance with article 90 of title 37, C.R.S. Mr. Campbell testified that he contacted the State of Colorado Water Resources Division Well Permit office and was told by a representative that the permit for the subject's well is not designated as a "final permit". The witness testified that Petitioner has not obtained a decree from the Water Court for the well water. Therefore, the well alone does not qualify the land for agriculture classification.

Mr. Campbell testified that he had performed several field inspections of the subject property during 2010 and found no change in use of the land or other evidence to support an "unusual condition" change in the property during 2010 to support a change in value. The witness provided evidence that the land area allocated to the commercial use area is based on visual inspection of the use of the land and a calculation using the assessor's GIS computer application, rounded up to five acres as a benefit for Petitioner. The witness testified that a portion of the five acres allocated to the commercial use is disputed by Petitioner because it is accessible to livestock, but the use of that area is for equipment storage to support the commercial use.

Petitioner presented insufficient probative evidence and testimony to show that the tax year 2010 classification of the subject property was incorrect.

The Board has relied on Section 39-1-102 (1.6)(a)(IV), C.R.S., which states among the qualifying criteria for agricultural land, "...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 groundwater 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". The Board was not persuaded by Petitioner's evidence that the well permit qualifies as a final permit and no evidence was presented that the Water Court has issued a decree for appropriated water for this well. Therefore, the Board concludes that according to the plain language of the statue, the well permit alone does not qualify the subject property for agriculture classification for tax year 2010.

Petitioner failed to provide sufficient evidence and testimony to persuade the Board that the land area allocated to the commercial portion of the property is incorrect. The fence around the building improvements was not constructed until 2012. The Board further finds that the area in dispute that now lies outside the fence is used for equipment storage in conjunction with the industrial building, and that based on testimony, does not have any grass for livestock grazing use.

Petitioner failed to produce sufficient probative evidence and testimony to show that the value assigned to the improvements for tax year 2010 is incorrect. The Board finds that the raw cost data from Marshall and Swift is not sufficient to specifically support a lower value for the subject building improvements. Petitioner contends that the 7% depreciation used by Respondent in the original valuation was insufficient. However, the Board finds that the BAA adjudicated value conclusion for tax year 2009 in the Docket 55541 decision presented as evidence included a higher depreciation figure and Petitioner did not present any support for another depreciation rate.

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 19th day of September 2012.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Brooke B. Leer

Brooke B. Leer

Louesa Maricle

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