BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket Number: 58200
Petitioners: **ELLEN L. ANDREW,** v. Respondent: **TELLER COUNTY BOARD OF EQUALIZATION.**	

ORDER DISMISSING APPEAL

THIS MATTER came before the Board of Assessment Appeals on September 28, 2012, on Respondent's Motion for Summary Judgment, Debra A. Baumbach and James R. Meurer presiding. Mr. Matthew A. Niznik, Esq. appeared on behalf of Respondent. Petitioner, Ellen L. Andrew, appeared pro se. Respondent's Motion for Summary Judgment was filed with the Board on August 23, 2012. Petitioner did not file a written response to Respondent's Motion for Summary Judgment.

I.

This appeal concerns the 2011 classification of Petitioner's property, located at 300 Elk Court Drive, CO 80814, identified by the Teller County Schedule No.: R0014294. The subject consists of a 2,922 square foot residence built in 2009 on a 35,01 acre lot. Teller County changed the classification of the subject property from agricultural to residential beginning in tax year 2010, based upon the completion of Petitioner's residence. Petitioner appealed the residential classification of her property for tax year 2010 to the BAA in docket number 56141. The BAA upheld Teller County's determination and found that the property was properly classified as residential. Petitioner appealed the BAA's decision to the Colorado Court of Appeals. The Court of Appeals upheld the BAA's decision and held that the subject property was correctly classified as residential for the 2010 tax year.

For tax year 2011, the year at issue in this appeal, Teller County again classified the subject property as residential. Petitioner is requesting agricultural classification for the 2011 tax year.

II.

At the September 28, 2012 hearing on Respondent's Motion for Summary Judgment, Respondent cited Subsections (1.6)(a)(I) through (V) of Section 39-1-102, C.R.S., that provide five distinct statutory frameworks in which a property may obtain agricultural classification. Respondent argued that Petitioner's land did not fit into any of the five statutory frameworks for agricultural classification.

Respondent contended that the subject could not be classified as agricultural under Subsection (I) of Section 39-1-102(1.6)(a), C.R.S., which requires, among other things, that a property be used as a farm or a ranch for three consecutive years in order to be eligible for agricultural classification. Applying the statute, Respondent argued that Subsection (I) requires that Petitioner's land be used as a farm or a ranch during 2009, 2010 and 2011 tax years. Respondent pointed out that both the BAA and the Colorado Court of Appeals have previously determined that Petitioner's property was not used as a farm/ranch in 2010 and was correctly classified as residential for the 2010 tax year. Citing *Von Hagen v. Board of Equalization of San Miguel County*, 948 P.2d 92 (Colo. App. 1997), Respondent contended that Petitioner was estopped from re-litigating the classification of the property for the 2010 tax year. Thus, Respondent argued that Petitioner could not maintain her claim of agricultural classification pursuant to Subsection (I) of Section 39-1-102(1.6)(a), C.R.S.

Further, Respondent rejected agricultural classification pursuant to Subsections (II) through (V) of Section 39-1-102(1.6)(a), C.R.S. According to Respondent, Subsection (II) is inapplicable to the subject property as it sets a framework for agricultural classification for parcels of land that are at least 40 acres; Petitioner's parcel is approximately 35.01 acres. Subsection (III) is inapplicable because it pertains to parcels of property that are, like the subject, less than 80 acres, but, unlike the subject, do not contain any residential improvements. Subsection (IV) cannot be used to classify the subject as agricultural because it pertains to the land owners with decreed water rights granted in accordance with article 92, title 37, C.R.S.; Petitioner neither has nor claims to have the respective water rights to the subject parcel. And finally, Respondent argued the inapplicability of Subsection (V) that requires, as a prerequisite for agricultural classification, that the subject must meet the definition of agricultural land as set forth in Subsections (I) to (IV), which Respondent maintains the subject does not.

Respondent concluded that because Petitioner's property did not fit into any of the five definitions of agricultural land as stated in Section 39-1-102 (1.6)(a)(I)-(V), C.R.S., the subject property should be classified as residential for the 2011 tax year.

In response, Petitioner testified that her property is a part of the Elk Valley Estates which was established in 1990. The developer of Elk Valley Estates placed the entire 1,100 acres of the Elk Valley Estates into a deed of Conservation Easement with the State of Colorado for the use and benefit of the Colorado Division of Wildlife and the Colorado Wildlife Commission. Petitioner purchased the subject lot in 1998. Since 1999 through the 2009, Petitioner's land was classified as agricultural, with yearly taxes of $10.50 starting in 1999 and gradually increasing to $13.50 by 2009. After the construction of the residence on the subject was completed in 2009 and an occupancy permit was issued for the home in 2010, Teller County re-classified the subject

parcel from agricultural to residential for the 2010 tax year.

Petitioner challenges the part of the Colorado Court of Appeal's decision pertaining to her 2010 tax appeal, where the Court stated that Petitioner presented no evidence indicating that any haying operations on her parcel occurred during the required statutory period. Petitioner states that her present appeal pertaining to the 2011 tax year is supported with documentation showing that hay has been produced, mowed, and baled on the property, with profit and loss information for the last 4 years, and land lease agreement with the local farmer who actually mows, bales, and sells the hay. Petitioner presented for the Board's review the following documentation in support of her claim: Itemized Expenses For Farm Income Spreadsheet; Schedule F Farm Income; Hay Lease Agreement; Elk Valley Quick Report, etc.; and Homeowner's Dues Sheets.

In addition, Petitioner argued that the Court of Appeals refused to address the issue of the Assessor Office's failure to provide proper notification and explanation when changing the classification of her property from agricultural to residential as required by Section 39-1-103(5)(c), C.R.S.

And lastly, Petitioner alleged that the Elk Valley's Deed of Conservancy was written in 1990 pursuant to Section 38-30.5-101 - 112, C.R.S., and thus Section 39-1-102 (1.6)(a), which did not come into existence until 1995, should not be applied in this matter. While conceding that Respondent correctly interpreted Subsection (III) of Section 39-1-102(1.6)(a), C.R.S. *e.g.*, a land in conservancy that is less than 80 acres ceases to be agricultural once a house is placed on the land, Petitioner contended that the said statute "was not available, written, or law in 1990, when Elk Valley land was put into conservancy so should not be used to disqualify the land as agricultural."

III.

The Board finds that the subject property does not fit into the framework definition for agricultural classification as set out by Section 39-1-102(1.6)(a), C.R.S., that requires three consecutive years (2009, 2010 and 2011) of farming/ranching activities on the subject. Because the Board as well as the Colorado Court of Appeals had previously determined that the subject was not used for farming/ranching for the 2010 tax year, Petitioner is estopped from re-litigating the subject property's 2010 classification.

Further, the Board does not have jurisdiction to review the Assessor's Office alleged failure to properly notify Petitioner when her property classification was changed from agricultural to residential. The Board's jurisdiction is limited to reviewing the decisions issued by the County Assessors, County Boards of Equalization, County Boards of Commissioners, and Property Tax Administrator. *See* Section 39-2-125, C.R.S.

The Board also finds that Petitioner's arguments relying on Section 38-30.5-109, C.R.S., are misplaced. Whereas the *establishment* of the subject's conservation easement was properly accomplished pursuant to Section 38-30.5-109-112, C.R.S., the *classification* of the subject for taxation purposes is determined pursuant to Section 39-1-102(1.6)(a), C.R.S. The two statutes

are independent and accomplish separate statutory goals.

Petitioner carries the burden of proof to establish any qualifying basis for reclassifying the subject property. *Home Depot USA, Inc. v. Pueblo Cnty. Bd. of Comm'rs*, 50 P.3d 916, 920 (Colo. App. 2002). The Board finds that Petitioner did not meet its burden of proof to show that the subject property should be re-classified from residential to agricultural for the 2011 tax year. The Board was not persuaded that Petitioner's property fits any of the statutory definitions for agricultural classification as set out in Section 39-1-102(1.6)(a), C.R.S. The Board finds that the subject property was correctly classified as residential for the 2011 tax year.

ORDER:

The Petition is dismissed.

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/MAILED this 8th day of November, 2012.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

James R. Meurer

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

58200