BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **ABERDEEN INVESTORS INC,** v. Respondent: **ADAMS COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 48108**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on May 12, 2008, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by Barry Goldstein, Esq. Respondent was represented by Jennifer Wascak, Esq. Petitioner is protesting the 2007 classification of the subject property.

PROPERTY DESCRIPTION:

The subject properties are described as follows:

Adams County Schedule No. / Parcel No.	Respondent's Assigned Value	Respondent's Assigned Classification
R0071223 / 0172101000020	$127,930.00	Vacant Land
R0071226 / 0172101000030	$37,980.00	Vacant Land
R0071227 / 0172101000031	$90,480.00	Vacant Land
R0075241 / 0172112000002	$257,080.00	Vacant Land
R0075243 / 0172112000006	$75,000.00	Vacant Land
R0143945 / 0172112200002	$99,230.00	Vacant Land
R0155355 / 0172101000020	$397,080.00	Vacant Land
R0155356 / 0172112000002	$127,930.00	Vacant Land
R0155358 / 0172112000006	$10,750.00	Vacant Land
R0155360 / 0172112200002	$1,029,700.00	Vacant Land

Adams County Schedule No. / Parcel No.	Respondent's Assigned Value	Respondent's Assigned Classification
R0162669 / 0172112200003	$734,420.00	Vacant Land
R0162670 / 0172112300001	$127,750.00	Vacant Land
R0162680 / 0172112319001	$204,410.00 $252,750.00	Vacant Land Residential/Ag Improvements
R0162685 / 0172112203001	$36,750.00	Vacant Land

The subject properties consist of fourteen parcels totaling approximately 220 acres in size, located at Highway 2 and 104th Avenue in Commerce City. Schedule number R0162680 has improvements. The remaining parcels are vacant land. Petitioner is requesting agricultural classification for all fourteen parcels.

Petitioner purchased the subject properties on March 19, 2004. There was no farming or grazing activities on the subject properties in 2004. On July 1, 2005, the subject properties were leased to Crows Foot Cattle Company for cattle grazing for a period of six years. Cattle grazed on the subject properties beginning July 1, 2005 through the remainder of the grazing season in 2005. Cattle also grazed on the subject properties during the general grazing season of May through October in calendar years 2006 and 2007. Supplemental feeding occurred outside the grazing season during calendar years 2006, 2007, and 2008. Respondent does not dispute that cattle were grazing during the majority of the grazing season for 2006, 2007, and 2008.

For tax years 2005, 2006, and 2007, the Adams County Assessor classified and valued the subject properties as residential and commercial vacant land. For tax year 2008, the Assessor classified the subject properties as agricultural.

Petitioner challenges the 2007 classification of the subject properties and contends that the subject properties should be classified as agricultural. For tax year 2007, Respondent assigned an actual value of $3,356,456.00 to the subject properties' land, and $252,750.00 to the improvements on Schedule Number R0162680. Both parties stipulate to a 2007 actual land value of $5,534.00 if classified as agricultural and a 2007 actual land value of $3,356,456.00 if no change in classification occurs.

CRS § 39-1-102(1.6)(a) states:

> "Agricultural land", whether used by the owner of the land or a lessee, means one of the following: (I) 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, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment.

"Ranch" is defined as "a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit." C.R.S. § 39-1-102(13.5).

At issue is the interpretation of CRS § 39-1-102(1.6)(a)(I) regarding the "used the previous two years and presently is used as a farm or ranch" portion of the statute. More specifically, the question before this Board is whether the usage of the subject properties for the grazing and feeding of cattle for the period July 1, 2005 through 2007 constitutes usage for "the previous two years and presently" for tax year 2007. Neither party disputes that from July 1, 2005 through 2007 the subject properties were used for grazing livestock for the primary purpose of obtaining a monetary profit.

Petitioner argues that the plain meaning of the statute should apply, and the "previous two years" requirement has been met by grazing the subject properties in 2005 and 2006. The properties were also grazed in 2007, meeting the "presently is used" agricultural requirement. Therefore Petitioner believes the subject properties should be classified as agricultural for tax year 2007.

In contrast, Respondent argues that agricultural use must be 24 months of use prior to the assessment date, January 1, 2007. To be classified as agricultural in 2007, use must have occurred on or prior to January 1, 2005. The 2005 mid-year lease does not qualify the properties for agriculture use until January 1, 2006. According to Respondent, only 18 months of actual use occurred verses the 24-month requirement.

The Board agrees with Petitioner that the statute requires use of the subject property as a farm or ranch during the previous two years, and not, as Respondent argues, use for the entire previous two years. The Board, as a reviewing tribunal, must construe and apply the statutory language in accordance with legislative intent. "To determine that intent we look primarily to the language of the statute itself with a view toward giving effect to the statutory terminology in accordance with its commonly accepted meaning." *Boulder County Bd. of Equalization v. M.D.C. Construction Co.*, 830 P.2d 975, 980 (Colo. 1992), *citing Kern v. Gebhardt*, 746 P.2d 1340, 1344 (Colo. 1987). The Board must also presume that the legislature intended the statute to have a just and reasonable result. *See Douglas County Bd. of Equalization v. Clarke*, 921 P.2d 717, 721 (Colo. 1996).

In order to be eligible for an agricultural classification, CRS § 39-1-102(1.6)(a)(I) requires that real property be "used the previous two years and presently" as a farm or ranch. There is no requirement in the statute that the property be used *throughout* the previous two years as a farm or ranch.

Moreover, agricultural classification is unique in property taxation in that the use of an agricultural property as a farm or ranch seldom occurs on January 1. As Respondent's witness, Ronald Millar, Adams County Assessor's Office agricultural appraiser testified, seasons vary throughout the state and each year has its own grazing or growing season.

For example, with respect to a farm, the growing season generally occurs during the summer months. There are also some times in a farming and ranching operation when some portion of a farm or ranch will not even be used for grazing in a particular year. *Clarke, supra*, at 719.

If the legislature intended qualifying uses to be in place by January 1, two years prior to the assessment date, which is outside the typical agricultural practice, it would have stated as much. By simply stating "was used the previous two years" the plain meaning would be use sometime during each of the two previous years, since growing seasons vary from county to county and farming and ranching practices vary from person to person. Respondent's interpretation results in the "previous three years" prior to the assessment date, which is a strained interpretation of the language of the statute. Had the legislature intended for qualifying uses to be in place during the previous three years, it would have stated as much.

Respondent's witness, Mr. Millar, testified that each county would be doing "their own thing" and not the same statewide if a January 1 date is not used. He believes other counties are interpreting the statute incorrectly. However, the Board's interpretation of the statute provides uniform guidance for each county by requiring actual agricultural use during each of the previous two years.

In addition, Respondent's interpretation seeks to change the historical application of the statute by the Board of Assessment Appeals. The Board historically has looked to agricultural activity during the previous two tax years when addressing whether a property should be classified as agricultural, with no mention of January 1 two years prior to the assessment date. *See Nabors v. Fremont County Bd. of Equalization*, Docket No. 48156 (Oct. 21, 2008) (finding the property was actually grazed in 2005 and 2006 but denying agricultural classification for tax year 2007 because there was not actual grazing in 2007), *Waters v. Montezuma County Bd. of Equalization*, Docket No. 47705 (May 23, 2007) (denying agricultural classification for tax year 2006 after finding there were no cattle present in 2004 and 2005), *Restivo v. Pitkin County Bd. of Equalization*, Docket No. 45199 (June 21, 2006) (stating that for tax year 2005 classification as agricultural the applicable years to review are 2003, 2004, and 2005), and *Zusy v. Archuleta County Bd. of Comm'rs*, Docket No. 37996 (Aug. 3, 2001) (ordering agricultural classification for tax year 2000 after analyzing ranching activities in 1998, 1999, and 2000).

Respondent's witness, Mr. Millar, directed the Board to the *Assessor's Reference Library* ("ARL") under the "Special Classification Topics" section regarding "Property Changing Use" which states, "When the use of a property changes after January 1, the assessment date, the classification assigned to the property as of January 1 remains in place until the following January 1." 2 *Assessor's Reference Library: Administrative and Assessment Procedures* 6.6 (Rev. Apr. 2006). Respondent argues that since a mid-year change in use of a property generally does not permit a change in classification, the mid-year start of agricultural use on the subject property should not qualify until January 1 of the following year. The Board is not convinced by this argument, as the section of the ARL cited is not the Division of Property Taxation's ("DPT") interpretation of the statutory section at issue. There is a specific "Agricultural Property" section of this same chapter on Property Classification Guidelines, which states, "To be classified as agricultural land, the following criteria must be met. 1. Land that is used as a farm or ranch pursuant to §§ 39-1-102(3.5) and (13.5), C.R.S. The use must have been the same for at least the two prior years." *Id.* at 6.30. The Board's interpretation of C.R.S. § 39-1-102(1.6)(a)(I) does not conflict with this section of the ARL. Mr. Millar testified that there is nothing in the DPT manuals regarding the "previous two years" requirement.

The Property Tax Administrator ("PTA") issued a memorandum to Adams County interpreting CRS § 39-1-102(1.6)(a)(I). Respondent argues that considerable weight should be given to this interpretation of the statutory language. Respondent cites *Jefferson County Board of County Commissioners v. S.T. Spano Greenhouses, Inc.*, arguing that deference should be given to the PTA's interpretation of a property taxation statute that does not provide specific guidance on the issue. However that case specifically notes that the PTA's interpretation is embodied in the ARL. *S.T. Spano*, 155 P.3d 422, 425 (Colo.App. 2006). Respondent also cites *Huddleston v. Grand County Board of Equalization*, 913 P.2d 15 (Colo. 1996) arguing that the PTA's interpretation should be given deference. However this case again relates to deference to the PTA's interpretation as published in the ARL which has the effect of formal rules and is binding on all of Colorado's county assessors. The memorandum issued by the PTA on January 17, 2008 was issued to Gil Reyes, the Adams County Assessor, and distributed to Jen Wascak, the Adams County Attorney. Respondent's witness, Mr. Kyle Hooper a Property Taxation Specialist with the DPT, testified that there was no written DPT position on this issue until the memorandum to the Adams County Assessor. For interpretations to be published in the ARL, and therefore binding on all 64 counties, a position is drafted, sent to the Statutory Advisory Committee for approval, and then sent to Legislative Legal Services, as required by statute. Mr. Hooper testified this memorandum is the opinion of the PTA on this issue even though it is not addressed to all 64 county assessors. The Board gives little weight to the January 2008 memorandum from the PTA to Adams County as it was issued without consultation with the Statutory Advisory Committee. The PTA did not go through the process to publish the policy in the ARL. Moreover, while the construction of a statute by an agency charged with its enforcement is entitled to deference, courts are not bound by that construction where the result reached by the agency is inconsistent with legislative intent as manifested in the statutory text. *M.D.C. Construction Company*, *supra*, at 981.

Petitioner presented sufficient probative evidence and testimony to prove that the subject properties were incorrectly classified and valued for tax year 2007.

Accordingly the Board holds the tax year 2007 classification of the subject properties should be agricultural because the properties were grazed during the 2005, 2006, and 2007 grazing seasons. The Board concludes that the 2007 actual land value for the subject properties should be reduced to $5,534.00, based on an agricultural classification.

The Board declares this matter to be of statewide concern.

ORDER:

Respondent is ordered to reclassify the subject properties as agricultural and to reduce the 2007 actual value of the subject properties to $258,284.00, with $5,534.00 allocated to the land for all schedule numbers, and $252,750.00 allocated to the improvements on Schedule Number R0162680.

The Adams County Assessor is directed to change his records accordingly.

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 CRS § 24-4-106(11) (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 CRS § 24-4-106(11) (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.

CRS § 39-8-108(2) (2008).

DATED and MAILED this 14th day of January 2009.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Karen E. Hart

Karen E. Hart

This decision was put on the record

JAN 14 2009

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

Heather Flannery

SEAL

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