

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 48349

Petitioner:

**JOHN ROBERT FETTERS JR. AND JO ANN Y.
FETTERS,**

v.

Respondent:

**ARAPAHOE COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on February 19, 2009, Sondra W. Mercier and Karen E. Hart presiding. Petitioners were represented by Charles E. Norton, Esq. and J. Michael Keane, Esq. Respondent was represented by George Rosenberg, Esq. and Breena N. Meng, Esq. Petitioners are protesting the 2007 actual value and classification of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Arapahoe County Schedule No. 2073-34-2-00-002

The subject property consists of a 20-acre vacant land parcel.

The subject property is currently classified as vacant land. Petitioners are requesting an agricultural land classification. Both parties agree to a value of \$700,000.00 for the subject property if the Board determines the current vacant land classification is correct.

Petitioners had an agreement with Mr. Ray Wooters, who was running cattle on the adjacent property, to use the subject property for cattle grazing in 2005, 2006, and until September 2007. Mr. Wooters was allowed to run cattle on the subject property but the cattle were not allowed to stay overnight. There is no gate from the neighboring property so Petitioners required Mr. Wooters to

cut and repair the fence daily to allow his cattle to graze the subject property. The cattle could only be on the subject property for hours at a time. Mr. Wooters would need to stay and watch them and then remove the cattle as they could not stay overnight. The cattle were watered on the adjacent property. The compensation with Mr. Wooters was for him to keep up the fence.

Petitioner, Ms. Jo Ann Fetters, testified that she did not know if Mr. Wooters had cattle on the subject property in 2007.

In September 2007, Petitioners decided to utilize the parcel themselves. Petitioners' preparations in 2007 to put their own cattle on the subject property included the placement of a loafing shed, a water tank with a propane tank heater, and a hay feeder. Petitioners put eight head of their own cattle on the subject property on December 29, 2007.

There are beehives on both the subject property and Petitioners' larger parcel. Petitioners' agreement with the beekeeper is that they receive one gallon of honey each year.

Petitioners' witness, Mr. Mike Ribley, a self-described hobby bee keeper, testified that he has had between 5 and 12 beehives on the subject property for 15 years. The number of hives varied according to the amount of flowers and moisture each year. The only water available is north of the subject property about 0.25 miles. He leaves the hive boxes there for the bees to clean out the leftover honey after processing. He has them fenced off to keep cattle away from the hives. He has seen cattle on the subject property over the last 10 years; the cattle free range. He is on the property every weekend from the middle of May to the middle of September each year. He has seen cattle on the property every year.

Petitioners' witness, Mr. Ray V. Wooters, testified that he runs cattle on the Kingspoint property south of the subject property and that he has run cattle on the subject property in 2005, 2006, and 2007. He has a herd of ninety pair. He drives the cattle onto the subject property with two or three people on horseback. The cattle enter on their own when the grass is green. He cuts the fence to allow access to the subject property. The cut fence is not seen from the neighbors' property. The days of grazing varied by year.

Respondent's witness, Mr. Richard Hein, a Certified Residential Appraiser with the Arapahoe County Assessor's office testified that he has been in the area doing inspections on many occasions from 2004 through 2007. He has driven past the subject property and inspected it from the neighboring roads and adjacent properties; he has never entered the subject property. He never saw cattle on the subject property.

Respondent's witness, Ms. Margaret Noble, 7833 South Espana Way, Centennial, has resided directly east of the subject property since September 2000. She is home during the day and she can see the northeast portion of the subject property. She did not see any cattle on the subject property during 2005 or 2006. She saw cattle on the subject property on December 29, 2007. She has not seen horseback riders on the subject during 2005, 2006, or 2007. She has seen cattle on the Kingspoint property. She has never seen any fencing repaired on her side of the property.

Respondent's witness, Ms. Klaudette Hillier, 7884 South Espana Way, Centennial, has resided next to the subject property since January 1995; their side yard runs along the east side of the subject property and she can see about half of the subject property as her house is on a hill. She is a stay-at-home mom and she did not see any cattle on the subject property in 2005 or 2006. There were cattle on the property in December 2007. Their back yard runs along the Kingspoint property. She saw cattle on the Kingspoint property but none on the subject property. She has not seen the fence taken down on either the subject or the Kingspoint property. There have never been 50-100 cattle on the subject property.

Respondent's witness, Ms. Betty Simpson, a Registered Appraiser with the Arapahoe County Assessor's office testified that she inspected the subject property on June 20, 2007. She saw four cow pies at the entrance but no others on the property. The four cow pies looked like they had not been deposited there by a cow. There was a very small water tank that would need to be filled daily. There was no evidence of bees in the hives. The fencing around the hives did not encompass the entire hive area and was in disrepair. She saw no evidence of livestock trails. The undergrowth was too thick to have been grazed prior to the inspection. She did not see any evidence of repair in the perimeter fence. She has never seen the original grazing contract.

Respondent's witness, Ms. Cherice Kjosness, a former Arapahoe County Assessor's office employee testified that she walked the subject property in 2007. The grass growth on both sides of the east fence was the same. There was an abundant grass growth due to plenty of moisture. However, the previous growth was present and overlaid with new grass growing up through it. Parcels that are regularly grazed have cow trails and bare areas that are bedding areas with disturbed ground. The subject property was un-disturbed grassland. There was no evidence of use of the subject property and she has no evidence of use in conjunction with Petitioner's other agricultural property. Regarding the cow pies at the gate, she thinks they were deposited by either throwing or falling off a truck or trailer.

Regarding the apiary, Ms. Kjosness testified that there was feed for bees. However there likely would not have been any feed for the bees if cattle had grazed the palatable fodder. Cattle generally graze the best palatable fodder first. Apiaries are listed under "all other agriculture" properties in the Assessor's Reference Library. There were not enough hives to be a predominant use, but even if there were, the subject property would be classified as "all other ag" and assessed at 29%. The predominant use of the subject property is vacant land.

Respondent assigned an actual value of \$2,628,120.00 to the subject property for tax year 2007 but is recommending a reduction in value to \$700,000.00.

Sufficient probative evidence and testimony was presented to prove that the subject property was correctly classified but incorrectly valued for tax year 2007.

There was conflicting testimony regarding the usage of the subject property during the assessment period. The Board was most persuaded by Respondent's witnesses and exhibits.

The subject property was not operated as part of Petitioners' larger operation. Petitioners' indicated that the subject property was separately leased to Mr. Wooters for cattle grazing for 2005, 2006, and a portion of 2007.

However, the Board is convinced that there was no qualifying agricultural use of the subject property during 2005, 2006 or 2007 by Mr. Wooters. The neighboring property owners never observed livestock on the subject property. Respondent's witness Mr. Hein testified that he was in the area multiple times from 2004 through 2007 and never observed livestock on the subject property. The inspection of Respondent's witnesses Ms. Simpson and Ms. Kjosness in June 2007 confirmed that no cattle grazing activities were present; the grass was tall with old growth underneath, there were no cattle trails, no cow pies, and many yucca pods were present. If Mr. Wooters had herded his ninety pair of cattle onto the subject property, there should have been clear evidence of trails and cow pies.

Additionally, the Board was not convinced that Petitioners' atypical lease conditions would have led to grazing use. Petitioners did not allow the livestock to graze the subject property overnight, and required Mr. Wooters to cut the barbed wire fence each day to allow access and then repair the fence each evening.

Petitioners placed their own livestock on the subject property on December 29, 2007. The Board finds three days of usage insufficient to qualify the subject property for agricultural classification for 2007.

The Board is not convinced that any apiary use was sufficient to qualify the subject property as "all other agriculture." The small apiary area had fences in disrepair and the hives appeared to be abandoned when the June 2007 inspection was conducted.

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.

CRS § 39-1-102(3.5) defines farm as, "[A] parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit." Ranch is defined as, "[A] parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), 'livestock' means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit." CRS § 39-1-102(13.5).

The Board concludes that the subject property was not used for the two previous years of 2005 and 2006 as a farm or ranch. There was only three days of use on 2007. The subject property did not meet the definition of agricultural land. The Board concludes that the 2007 classification of the subject property should be vacant land.

The Board affirms the 2007 stipulated actual value of the subject property of \$700,000.00.

ORDER:

Respondent is ordered to reduce the 2007 actual value of the subject property to \$700,000.00.

The Arapahoe County Assessor is directed to change his/her 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 1st day of June 2009.

BOARD OF ASSESSMENT APPEALS

Sondra W Mercier
Sondra W. Mercier

Karen E Hart
Karen E. Hart

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

Heather Flannery
Heather Flannery

