

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>BERKELEY FAMILY LIMITED PARTNERSHIP,</p> <p>v.</p> <p>Respondent:</p> <p>GARFIELD COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 52205</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 30, 2010, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by Miriam Berkeley, Manager of the Partnership. Respondent was represented by Cassie Coleman, Esq. Petitioner is protesting the 2009 actual value of the subject property.

Subject property is described as follows:

**3961 County Road 114, Glenwood Springs, Colorado
Garfield County Schedule No. R041910**

The subject property consists of a 94.341 acre parcel which is part of the Rivendell Distribution & Sod Farm. A portion of the property is in a conservation easement. The subject property is located at an elevation of 7,000 feet or higher and on an ancient sea bed with a 6-12% slope.

At dispute is the irrigation classification of the property. Respondent used a four ton production rate. Petitioner believes the rate should be two tons. Also, Petitioner argues that only the actual acreage in production should be classified as irrigated land, with the balance classified as grazing. Respondent argues that all of the land is essential to the irrigation ability of the property, and therefore all of the land should be classified as irrigated land.

Petitioner's witness, Ms. Miriam Berkeley, testified that the farm raises as much bluegrass sod as water limitations allow. Approximately 59 acres can be in sod production and the number of acres harvested each year varies, with an annual average of 40 acres.

According to the Assessor's Reference Library (ARL), Volume 3 page 5.29, as included in Petitioner's Exhibit 2, "The land used to grow sod is treated in the same manner as other farm ground, e.g., irrigated land or dry farm land based on the soil type and regardless of the type of crop grown." The subject property has been valued as though in irrigated hay production. Ms. Berkeley testified that in order to have a four ton hay production, there must be two or three cuttings annually. Due to the altitude and growing conditions, she believes only one cutting is possible. Neighboring farms harvest one cutting annually.

Ms. Berkeley testified that there are wetlands near the pivot sprinkler and the farm area she refers to as "the island" is surrounded by wetlands, which the Army Corps of Engineers controls; they will not let wetlands be used in any kind of production. She believes these areas should be valued as grassland.

Petitioner's witness, Brad Stults, the sod farm field manager, testified that the subject property soils are of three types: soil types 34 and 35, which are a capability Class 4 and soil type 69, which has a capability Class 5 rating. These soil types cannot produce four tons per acre. Respondent has valued the soil on the subject property as though it has a capability Class 1. Categorically, Class 1 soils have few limitations that restrict use. By contrast, the subject soils have limitations and with up to a 12 degree slope, require careful management for sod production. The Aspen Valley Land Trust conservation lands cannot be disturbed for any crop.

Petitioner is requesting a 2009 actual value of \$14,360.00 for the subject property.

Respondent's witness, Paul Schoeppner, a Certified Residential Appraiser with the Garfield County Assessor's Office, testified that the subject property was valued according to its soil type classification, type of crop grown and the procedures shown in the ARL. He considers the subject property to be fairly level with very slim slopes. Mr. Schoeppner determined that the subject property soils could produce four tons per acre.

Mr. Schoeppner testified that the land under the conservation easement should be valued the same as it was at the time it went into the conservation easement. The property had been misclassified as grazing land and has now been corrected to an irrigated land classification. He valued the property as one class, as all of the property is needed to grow the crop. Without the ponds, Petitioner could not grow the sod. All the land is an integral part of the operation.

Respondent assigned an actual value of \$52,210.00 to the subject property for tax year 2009.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2009.

The Board was most persuaded by Petitioner's Exhibit 3 which shows the ratings of the subject property soils. The Board is convinced that the entire subject property should remain classified as irrigated land but a production rate of two tons should be used. The Board is not convinced that a four ton production can be achieved at the subject property's altitude or that a Class 1 soil rating should be applied.

Using Petitioner's requested value of \$228.38 per acre for irrigated land, the Board concludes that the 2009 actual value of the subject property should be reduced to \$21,546.00.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject property to \$21,546.00

The Garfield 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 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 21 day of October 2010.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

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.

Amy Bruins

Amy Bruins

