

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Nos.: 52790 and
52791**

Petitioners:

**EL VASITO INC. AND
ZACK B. & MARY L. MARTIN TRUST
AGREEMENT,**

v.

Respondent:

GUNNISON COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 25, 2010, Diane M. DeVries and Karen E. Hart presiding. Petitioners were represented by L. R. Fitzgerald, Agent for the Zack B. & Mary L. Martin Trust Agreement and Vice President of Operations of El Vasito Inc. Respondent was represented by Thomas A. Dill, Esq. Petitioners are protesting the 2009 actual value and classification of the subject properties.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

Gunnison County Schedule Nos. R011856 and R040014

The subject properties consist of two vacant land parcels that are 142.349 acres and 72.56 acres in size. The subject properties' land cover consists of sage brush, riparian areas and trees.

The subject properties are leased to Mike and Mary Clarke of 4846 Cedar Road, Delta, Colorado under a lease dated September 3, 2007 for \$5.00 per year. There is a spring on the subject properties and the Clarkes are responsible for the fences. The fencing in 2008 was in poor shape, which is part of the reason the lease rate is low. According to an affidavit signed by Mike and Mary Clarke, 17 cows, 17 calves and 1 bull grazed the subject properties in 2009. The affidavit does not refer to grazing at any other time.

Petitioners' witness, Mr. L. R. Fitzgerald testified that he saw five head of cattle on the subject properties in July 2008, but admitted that they could have been there by trespass; he was not near enough to the cattle to see if they belonged to the Clarkes. Mr. Fitzgerald admitted that no grazing occurred in 2007.

Respondent's witness, Mr. Don Rundell, a Colorado Registered Appraiser with the Gunnison County Assessor's Office, inspected the subject properties in 2005, 2006, 2007 and 2008 and saw no agricultural use. The 2006 agricultural questionnaire returned by El Vasito indicated that no grazing had occurred on the subject property Schedule No. R040014. The subject properties were reclassified from agriculture to vacant land in 2006.

Petitioners submitted a copy of the Clarke agricultural lease to the assessor in 2007. After receiving the lease, Mr. Rundell conducted numerous inspections; the subject properties have easy access from the highway and were inspected when he was in the area. In the summer of 2008, Mr. Rundell spent four hours walking the entire subject properties, including the perimeter fence lines. He looked for evidence of grazing such as animal tracks, manure, grass height, and evidence of livestock watering at the spring. There was none. The four-strand barb wire fence was in poor condition. It was broken in places where wild game had gone through and there was no evidence of fence repairs. There were no cattle grazing the subject properties until 2009 and 2010.

Petitioners did not present any comparable sales or value request based on the market approach. Petitioners are requesting a 2009 actual value based on an agricultural classification.

Respondent presented an actual value of \$159,630.00 for subject property Schedule No. R040014 and an actual value of \$313,170.00 for subject property Schedule No. R011856 based on the market approach.

Respondent presented three comparable sales used to value both subject properties, ranging in sales price from \$85,000.00 to \$178,000.00 or \$1,516.00 to \$2,220.00 per acre and in size from 56.071 acres to 80.178 acres. After adjustments were made for riparian area, the sales ranged from \$2,001.00 to \$2,220.00 per acre. According to Mr. Rundell, these sales were nearest in location to the subject properties and had similar land cover. Mr. Rundell concluded to an actual value of \$2,200.00 per acre for each of the subject properties.

Respondent assigned an actual value of \$159,630.00 to subject property Schedule No. R040014 and an actual value of \$313,170.00 to subject property Schedule No. R011856 for tax year 2009.

Respondent presented sufficient probative evidence and testimony to prove that the subject properties were correctly valued and classified for tax year 2009.

Section 39-1-102(1.6)(a), C.R.S. 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.

Section 39-1-102(13.5), C.R.S. states, “‘Ranch’ means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purpose of this subsection (13.5), ‘livestock’ means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.”

Petitioners admit no grazing occurred on the subject properties in 2007 and Respondent presented sufficient evidence to convince the Board that no grazing occurred in 2008. Although the Clarke lease is considered valid, grazing did not commence until 2009. The Board finds that the subject properties were not actually grazed during the previous two years, 2007 and 2008, and therefore do not meet the definition of a ranch as defined in Section 39-1-102(13.5), C.R.S. and do not meet the definition of agricultural land as defined in Section 39-1-102(1.6)(a)(I), C.R.S.

Regarding the valuation, Petitioners presented no comparable sales or any other market data to dispute Respondent’s assigned valuation.

ORDER:

The petitions are 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 12th day of August 2010.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries
Diane M. DeVries

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.

HA Flannery
Heather Flannery

