BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 _____ Petitioner: **DOUGLAS GRANT DEBERG,** v. Respondent: **DOUGLAS COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 53295**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on January 20, 2011, James R. Meurer, Gregg A. Near, and Karen E. Hart presiding. Petitioner appeared pro se. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2009 actual value and classification of the subject property.

Subject property is described as follows:

11660 Smith Road, Franktown, Colorado
Douglas County Schedule No. R0354462

The subject property consists of an 80-acre vacant tract of land located in southeastern Douglas County. The subject property is bisected east to west by an approximately 100-foot high rock cliff. The northern half of the subject property is a lower elevation and is accessed via Smith Road. The southern half of the subject property is a higher elevation with a rock surface and has no vehicle access from the northern portion of the property; access is from a neighboring property on the west. There is no surface water on the subject property.

Petitioner is requesting an actual value of $240,000.00 for the subject property for tax year 2009. Respondent assigned a value of $520,000.00 for the subject property for tax year 2009.

Mr. DeBerg purchased the subject property in 1992. There was an existing lease at the time of purchase and the property was overgrazed by horses and burros under that lease. When the lease expired, in the late 1990s, Mr. DeBerg took the land out of production to restore it. In addition to the overgrazing, there were years of drought and winters with little snow, adding to the difficulty in

reestablishing the natural grasses on the property. Petitioner visited the subject property several times each year and kept the fences in good repair.

Petitioner submitted a cash lease dated March 1, 2007 executed by Petitioner and the co-trustees of the Arrow J. Land Revocable Trust, but Mr. DeBerg admitted no grazing occurred under the lease and no payment was received.

In 2009, Mr. DeBerg had the property inspected by Daniel A. Nosal of the Franktown Natural Resources Conservation Service (NRCS) Office, who gave recommendations regarding the carrying capacity of the subject property.

In January 2010, Mr. DeBerg executed a lease with Todd Gossnell. In April 2010, a gate and driveway were installed on Smith Road to allow access to the property. Cattle were placed on the property in May 2010, remaining on the property for the summer grazing season.

It is undisputed that there were no grazing activities on the subject property from the late 1990s through 2009.

Petitioner presented no comparable sales, choosing to critique Respondent's sales. Mr. DeBerg testified that he inspected each of Respondent's comparable sales. Sale 1 is located 16 miles away in a setting more urban than the subject property. Sale 2 has a commanding view of Pikes Peak and the front-range, is located on a major paved road, has surface water, and is in hay production, producing 700 large square bales of hay. Sale 3 is near State Highway 83, has surface water, is located one mile from an elementary school, and has an agricultural building. Sale 4 was not listed for sale and the sales price was negotiated between the two parties based on each party's needs; therefore, the sale price was not based on market value.

Unlike the comparable properties, the subject property has no sustainable surface water, is semi-arid, and can only support three animals for year-round grazing. The southern higher elevation portion of the subject property has an excellent view but is not suitable for building as it is mostly surface rock which would make it difficult to establish a foundation, and it would be difficult to grade in a road.

Petitioner is requesting a 2009 actual value of $3,000.00 per acre, or $240,000.00 for the subject property, based on discussions with surrounding property owners regarding their opinion of the value of real estate in the area.

Respondent's witness, John E. Whitley, a Licensed Appraiser with the Douglas County Assessor's Office, confirmed that when he inspected the property in August 2010, there was a gate installed off Smith Road and there was evidence of grazing. However, the 2010 activities have no bearing on the 2009 tax year classification. To qualify for an agricultural classification, a property must have been used, not planned for or intended to be used for agricultural purpose. Douglas County Assessor personnel, including Mr. Whitley, inspected the subject property on six different occasions between 2002 and 2009. There was no indication of growing crops or grazing until the August 2010 inspection.

Respondent presented a value of $520,000.00 for the subject property based on the market approach.

Mr. Whitley presented four comparable sales ranging in sale price from $264,000.00 to $780,500.00 or $5,938.00 to $14,040.00 per acre, and in size from 40 acres to 80 acres. No adjustments were made to the sales.

Mr. Whitley testified that he found one vacant land sale during the 18-month data gathering period that fell within his criteria of 40 to 80 acres in size. He expanded the data search to an additional six-month period to locate three more comparable sales. According to recorded information, Sale 4 is a valid sale. He admits Sale 1 has better access and is in a better location than the subject, but he testified that he had no way to measure an adjustment. Sales 2 and 3 are the largest sales, located near the subject property and are similar in topography. Giving most weight to Sales 2 and 3, Mr. Whitley concluded that the assigned value is slightly lower than the median value of these two sales.

Respondent assigned an actual value of $520,000.00, or $6,500.00 per acre to the subject property for tax year 2009.

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

Regarding the classification, according to Section 39-1-102(1.6)(a)(I), C.R.S. in pertinent part:

> (1.6) (a) "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… For purposes of this subparagraph (I), a parcel of land shall be "in the process of being restored through conservation practices" if: The land has been placed in a conservation reserve program established by the natural resources conservation service pursuant to 7 U.S.C. secs. 1 to 5506; or a conservation plan approved by the appropriate conservation district has been implemented for the land for up to a period of ten crop years as if the land has been placed in such a conservation reserve program.

There is no dispute that the subject property had no agricultural use during the pertinent years of 2007, 2008, and 2009. Therefore, the property can not qualify for an agricultural classification according to use.

Petitioner argues that the subject property should be classified as agricultural due to its need to be conserved as a result of overgrazing by a lessee.

While the Board recognizes Petitioner's efforts to conserve the property, there is no allowance in the statutes for the subject property to qualify as agricultural land placed in conservation as it has not been enrolled in a qualified conservation program or plan.

Regarding the valuation of the subject property, the Board can give little weight to Petitioner's opinion of value as it is not based on comparable sale data.

The Board gives little weight to Respondent's Sale 1 as it is superior in location and access, has no adjustment for these attributes, and is twice the sale price per acre as the remaining sales. Respondent's Sale 4 may not be a market sale, according to Petitioner's testimony, and the Board gives it lesser weight than the remaining two sales.

Respondent's Sales 2 and 3 appear to be superior to the subject property in view and water availability, and Sale 2 has no adjustment for its smaller size. The Board gives most weight to Sale 3, which is the same size as the subject property.

The Board concludes that the 2009 actual value of the subject property should be reduced to $5,900.00 per acre, or $472,000.00.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject property to $472,000.00

The Douglas County Assessor is directed to change 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 4 day of February 2011.

BOARD OF ASSESSMENT APPEALS

James Meurer

Gregg Near

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

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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