

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 55541

Petitioner:

MARIA ISABEL CHAVEZ,

v.

Respondent:

**DOUGLAS COUNTY BOARD OF
COMMISSIONERS.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on September 22, 2011, Debra A. Baumbach and Sondra W. Mercier presiding. Petitioner was represented by Victor F. Boog, Esq. Respondent was represented by Robert D. Clark, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2009.

Subject property is described as follows:

**5435 S. Kelly Court, Littleton, CO
Douglas County Schedule No. R0432558**

The subject property is mixed-use and includes both agricultural and industrial uses. The total site size is 36.99 acres. Improvements include a 5,000-square foot metal industrial storage building with concrete slab and asphalt parking area.

Petitioner is requesting that approximately 31.99-acres of the subject site be classified as agricultural use with the remaining five-acre portion of the site and storage building classified as industrial use. Petitioner contends that the storage warehouse has been overvalued.

Respondent reclassified 26.99-acres as vacant land for tax year 2009, with five-acres classified as agricultural use and the remaining five-acre portion of the site and storage building classified as industrial use. Respondent assigned an actual value of \$1,129,618.00 but is recommending a reduction in value to \$1,001,068.00.

Petitioner testified that both cattle and horses used for breeding had grazed on the entire 31.99 acres in 2009. The property has visible fencing around approximately five acres along the eastern portion of the property. Petitioner, Maria Chavez, testified that the remainder of the property is served with invisible pet fencing that has been adapted for use with horses and cattle. Petitioner presented a receipt for approximately \$200.00 for pet fencing. Petitioner testified that in 2002 they had purchased the building in used condition for \$11,000.00 and that her husband had completed all construction work for \$20,000.00.

Respondent's witness, Steven W. Campbell of the Douglas County Assessor's Office, testified that he had performed several field inspections on the subject property during 2008, 2009 and 2010. Mr. Campbell provided photos and testimony indicating that the entire 31.99 acres was fenced by mid-2010. Mr. Campbell reported that there was no visible fencing or grazing of the 26.99 acre portion of the subject during tax year 2008. Notification was sent to the petitioner in November 2008 that agricultural classification would be removed if agricultural use wasn't reinstated on the property by the beginning of 2009.

Respondent's witness, Robert D. Sayer of the Douglas County Assessor's Office, placed a value of \$31.00 per acre on the five fenced acres classified as agricultural use. Mr. Sayer presented four land sales to value the remaining 31.99 acres as industrial use. Mr. Sayer concluded to a value of \$24,000.00 per acre for the industrial land. Respondent used a state-approved cost estimating service to derive a value of the building of \$233,153.00. The market-adjusted cost value for the subject property was estimated at \$1,001,068.00.00.

Respondent assigned an actual value of \$1,129,618.00 but is recommending a reduction in value to \$1,001,068.00.

Respondent presented sufficient probative evidence and testimony to show that the tax year 2009 classification of the subject property was correct. Based on aerial photos, field inspection reports, and testimony, the Board was convinced that the 26.99-acre portion of the subject was not adequately fenced or used to qualify as agricultural use. Petitioner presented insufficient probative evidence to support the use of "pet fencing" to contain cattle and horses in that area on a regular basis.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2009 valuation of the subject property was incorrect. The Board was convinced that the value placed on the building by Respondent did not adequately reflect the actual "used" age and lack of electrical service. Mr. Sayer testified that he had not relied on specific cost data to adjust for the lack of electrical service. The Board concludes that a total adjustment of 10% for physical depreciation for age and an additional 10% downward adjustment for functional obsolescence better reflects the used condition and lack of electrical service. The Board recalculates the replacement cost new less depreciation of the building as \$200,000.00, rounded. The Board notes that the value placed on the building is well above the 2002 cost of construction; however, Petitioner provided insufficient evidence to support a value equal to the original cost.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2009 actual value for the subject property of \$967,915.00.

The Douglas 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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 4th day of October, 2011.

BOARD OF ASSESSMENT APPEALS:

Debra A. Baumbach

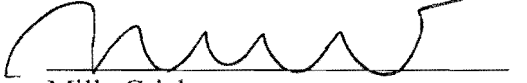
Debra A. Baumbach

Sondra W. Mercier

Sondra W. Mercier



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

A handwritten signature in black ink, consisting of a series of connected loops and curves, positioned above a horizontal line.

Milla Crichton