BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 56540
Petitioner: **EAST TWIN LAKES ESTATES, INC.,** v. Respondent: **LAKE COUNTY BOARD OF EQUALIZATION.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 2, 2011, MaryKay Kelley, Amy Williams and Debra A. Baumbach presiding. Petitioner was represented by Dennis O'Neill, President of East Twin Lakes Estates, Inc. Respondent was represented by Lindsey Parlin, Esq. Petitioner is protesting the 2010 classification of the subject property.

Subject property is described as follows:

NE ¼, 15-11-80, AKA Ross III A Subdivision, Lake County, Colorado
Lake County Schedule No. 10213200

The subject property consists of a 38.75-acre parcel, which has moderate to steep topography, water, and underground power. Fencing and gates surround most of the property, and an underpass provides cattle with access to the subject property from the main ranch. The subject is a part of a 1,500 acre ranch operation.

Petitioner is requesting the subject property be reclassified as agricultural for tax year 2010. Respondent has reclassified the subject property as vacant land and assigned an actual value of $158,875.00 for tax year 2010.

Mr. O'Neill contends that the subject parcel has been used in conjunction with his other parcels for grazing and therefore should be classified as agricultural. The original plan for subdividing the subject parcel never came to fruition due to, in part, some issues with the Lake County Building Department.

Mr. O'Neill testified that he developed the water rights and formed the water company responsible for supplying water to the entire subdivision. Further, Mr. O'Neill alleged that he grazes his own cattle as well as others cattle on the subject property. There were verbal leases in place on the subject parcel starting in 2008, but the subject property is currently covered under written leases.

Petitioner is requesting the subject property be classified as agricultural for tax year 2010.

Respondent's witness, Mr. Howard Tritz, Lake County Assessor, testified that Petitioner had requested the subject parcel be re-zoned for business. According to the Lake County Land Development Code Regulations, any parcels with business zoning do not qualify for agricultural status and only are allowed to sell agricultural products.

Respondent denied Petitioner's request for agricultural status because Respondent did not believe that Petitioner used the land for agricultural purposes during the previous two years, and Respondent was not provided with any lease agreements dated between 2008 and 2010. Mr. Tritz and another appraiser with Lake County had made several trips to the property and did not see any agricultural activity. Additionally, Petitioner did not answer Respondent's agricultural land classification questionnaire. Petitioner submitted two leases from 2007: one in which Petitioner is listed as the lessor and Mr. O'Neill is listed as lessee and another lease, where it appeared that handwritten information was inserted. Respondent considered the 2007 leases unreliable. The subject parcel had been classified as vacant land since 1997 according to the Assessor's records.

Respondent's witness, Mr. Bob Vigil, Appraiser with Lake County Assessor's Office, testified he made several trips to the subject parcel and observed one cow in 2010. The subject parcel was considered to be unsuitable for grazing, as there was a high amount of sagebrush, which is not suitable for livestock.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2010.

To qualify for agricultural classification, the subject property must be used as a farm or ranch as of the assessment date and have been used as such during each of the preceding two years. Section 39-1-102(1.6)(a)(I), C.R.S. Additionally, as prescribed by case law, the subject property must have been actually grazed or be part of a larger functional agricultural unit on which grazing occurred. *Douglas County Board of Equalization v. Edith Clarke*, 921 P.2d 717 (Colo. 1996).

The *Clarke* court enumerated that, in defining what operates as a functional parcel for the purpose of determining whether a property is a segregated parcel or a part of a larger integrated parcel, the determination is "controlled by whether the land is sufficiently contiguous to and connected by use with other land to qualify it as part of a larger unit or whether it is a parcel segregated by geography or type of use from the balance of the unit." *Clarke*, 921 P.2d 722. The *Clarke* court further stated that "the [Board] should take into account the physical characteristics of the rancher's property such as the location of natural boundaries like rivers or bluffs and the location of man-made boundaries like fences" and it did "not read the statute to permit an entire ranch consisting of numerous contiguous and non-contiguous pieces of land to be classified as one 'parcel.'" *Id.* at 723.

Both parties presented the Board with pictures of the subject parcel and the surrounding area owned by Petitioner. The Board gave minimal weight to these pictures, as none of the pictures had date stamps needed for the Board to verify the use between 2008 and 2010.

The Board was most convinced by Mr. O'Neill's testimony, which detailed an agricultural use as part of a larger functional unit. The subject property is accessed from Mr. O'Neill's ranch, which is classified as agricultural, by an underpass. Mr. O'Neill's ranch and the subject property are not separated by any natural or man-made boundaries. These facts lead the Board to believe that those two parcels operate as a larger functional parcel on which grazing has occurred at the time of the assessment and for the two preceding years.

Further, the Board did not agree with Respondent's various arguments. The Board rejected Respondent's argument that zoning should determine whether the subject property qualifies for agricultural classification because Colorado statute specifies that zoning is irrelevant. Section 39-1-102(1.6)(a)(I), C.R.S. The Board also rejected Respondent's argument that Petitioner should be precluded from agricultural classification because it did not submit an agricultural questionnaire because the law does not require Petitioner to submit a questionnaire. *See generally* Section 39-1-103(5)(c), C.R.S. Finally, the Board did not find that the lack of written leases between 2008 and 2010 precluded agricultural classification because the Board found that oral leases existed during that time frame, based on the credibility of Mr. O'Neill's testimony.

ORDER:

Respondent is ordered to reclassify the subject property as agricultural.

The Lake 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 16th day of August 2011.

BOARD OF ASSESSMENT APPEALS

MaryKay Kelley

Amy J. Williams

Debra A. Baumbach

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

Milla Crichton

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