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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MIKE VAN ATTA,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p> | <p>Docket No.: 56880</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on November 4, 2011, Diane M. DeVries and James R. Meurer presiding. Petitioner, Mr. Mike Van Atta, appeared pro se. Respondent was represented by David Wunderlich, Esq. Petitioner is protesting the 2010 classification and value for the subject property.

Subject property is described as follows:

**8815 Blue Mountain Drive, Golden, CO
Jefferson County Schedule No. 070230**

The property consists of single-family ranch style home containing 1,612 square feet of above grade living area and a partially finished walkout basement. The house was constructed in 1969 and site size is approximately seven acres. The property has a two car detached garage and a pole barn.

The house is located within the Blue Mountain Estates Subdivision. The Blue Mountain Estates Subdivision is located west of Highway 93 and south of Highway 72 and consists of approximately 148 parcels and 118 residential homes. The area is described as a box canyon bordered by two ridges that surround the valley. The east ridge has an elevation of about 7,120 feet, and the west ridge has an elevation of about 7,520 feet. The U-shaped valley has only one entrance via Highway 72. There is grazing on the east and north ends of the valley along the railroad tracks and on the west ridge.

Petitioner is requesting an agricultural classification for the property, as well as protesting the assigned value of the subject of \$450,000.00 for tax year 2010. Petitioner believes that market value should equate to \$258,357.00. Respondent classified the property as residential for tax year 2010 and presented an appraisal reflecting a market value of \$535,000.00.

Relative to classification, Petitioner acknowledged that grazing did not occur on the subject property or in the Blue Mountain Estates Subdivision in 2009. Petitioner indicated that he was not informed by the rancher leasing the property or the homeowner's association that grazing would not occur, and that adverse weather conditions, specifically snow fall, resulting from an "act of god" prevented the grazing of cattle. Due to these events, Petitioner requested that the Board make an exception and restore the agricultural classification for his property for tax year 2010.

The statutory definition of "agricultural land" is "[a] parcel of land...that was used the previous two years and presently is used as a farm or ranch...or that is in the process of being restored through conservation practices." Section 39-1-102(1.6)(a)(I), C.R.S. The statutory definition of "ranch" is "a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit." Section 39-1-102(13.5), C.R.S.; *see also Douglas County Board of Equalization v. Clarke*, 921 P.2d 717, 721 (Colo. 1996).

Respondent indicated that it was clear that grazing did not take place on the subject and the weather conditions resulting from an act of god could not be considered in Respondent's reclassification of the subject.

In terms of valuation, Petitioner testified that the assigned value of the property was a significant change in value from the previous years. Petitioner further testified that the property suffered from obsolescence including aluminum wiring, single pane windows, dated fixtures, a 40 year old furnace, rolled roof, and the presence of radioactive contamination. Petitioner indicated that the comparables used by Respondent in their appraisal were not the same age and condition as the subject. Petitioner indicated that his conclusion of value of \$258,357.00 was based on the previous value assigned by the assessor plus a land value of \$70,000.00.

Respondent's witness, Ms. Tammy J. Crowley, a Certified General Appraiser with the Jefferson County Assessor's Office, presented an appraisal referencing four comparable sales to support her opinion of market value. The sales ranged in price from \$459,900.00 to \$750,000.00 prior to any adjustments, and from \$517,250.00 to \$688,500.00 subsequent to adjustments. All of the sales were located in the same subdivision as the subject. The major adjustments to the sales included lot size, construction quality, year of construction, living area square footage, basement and basement finish. Ms. Crowley's final estimate of value for the subject was \$535,000.00 with equal emphasis on all of the sales.

Respondent assigned an actual value of \$450,000.00 to the subject property for tax year 2010.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified and valued for tax year 2010.

Concerning the residential classification of the subject, the Jefferson County Assessor's staff confirmed with the lessee/rancher that cattle were not placed in the Blue Mountain Estates Subdivision due to the weather. Petitioner concurred that no grazing occurred during 2009. The Board finds that the subject property's principal and only use was residential because grazing did not occur during 2009.

In terms of valuation, Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence. . ." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). After careful consideration of the testimony and exhibits presented during the hearing, the Board concludes that Respondent's comparable sales and adjustments to the sales accurately reflect the market value of the subject property.

ORDER:

The petition is 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).

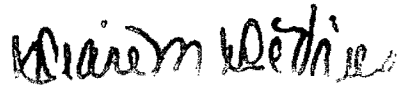
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

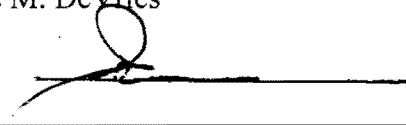
Section 39-8-108(2), C.R.S.

DATED and MAILED this 1st day of December, 2011.

BOARD OF ASSESSMENT APPEALS

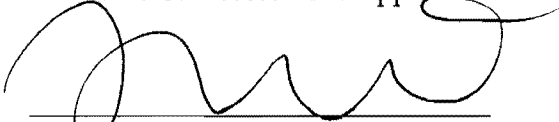


Diane M. DeVries



James R. Meurer

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



Milla Crichton

