BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 57985
Petitioner: **B&S GRAY INVESTMENTS, LLC,** v. Respondent: **MONTROSE COUNTY BOARD OF EQUALIZATION.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on October 25, 2011, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Andrew A. Mueller, Esq. Respondent was represented by Carolyn Clawson, Esq. Petitioner is protesting the classification and actual value of the subject property for tax year 2011.

The parties stipulated that there were six lots in the subdivision, approximately 4 acres each. Parties stipulated to the fact that winter wheat seed was spread on the six parcels on October 28, 2010 for a 2011 crop, and that the subject lots were irrigated through decreed water rights from the Uncompahgre Valley Water Users Association. Lots 2, 3, 4 and 5 have been classified as agriculture. Lots 1 and 6 have been classified as vacant land. For Lots 1 and 6, Petitioner stipulated to the values assigned by Respondent equal to $47,930.00 per lot, should the Board determine that the classification was correctly set as vacant land; and, $2,590.00 per lot if the Board determines the classification as agriculture.

Subject property is described as follows:

> **Lots 1-6, Sawtooth Subdivision, Olathe, Colorado**
> **Montrose County Schedule Nos. R0020589, R0020590, R0020591, R0020592, R0020593 and R0020594.**

The subject includes six vacant, undeveloped lots ranging in size from 4.155 to 4.161 acres. The lots are located along a cul-de-sac road and have utilities in place.

Petitioner's witness, Mr. Bill Gray of B&S Gray Investments, testified to the ongoing operation of the subdivision. Mr. Gray testified that all six lots were farmed as a single operation. Mr. Gray testified that in the fall of 2010 he disked all six lots as one parcel and had winter wheat planted. He was only able to water the southern portion of the property before the irrigation water was turned off for the season. Consequently, Mr. Gray testified that much of the seed planted on the northern portion of the property did not germinate correctly. Petitioner presented evidence showing the purchase and spreading fee for wheat dated October 28, 2010. The receipt indicates a property size of 24.0 acres, equal to the total acreage of the six subject lots. Petitioner also provided a copy of a receipt for delivery of wheat to Producers Co-Op on August 2, 2011 and a check from the Co-Op to Mr. Gray for wheat on August 4, 2011. Petitioner provided photos taken during the summer of 2011 showing wheat on the lots.

Petitioner contends that the subject was operated as one "functional parcel" and not as six individual parcels, citing the case of *Douglas County Board of Equalization v. Clarke*, 921 P.2d 717 (Colo. 1996) as definitive. Despite a sparse crop on the northern portion of the property, Petitioner contends that Mr. Gray took every step necessary to grow wheat on the entire property, including preparing the ground, seeding wheat, applying water when possible, and harvesting.

Respondent's witness, Scott Goodwin, Appraiser from the Office of the Montrose County Assessor, testified that he had inspected the subject lots several times between May and August 2011. Respondent's exhibit shows that there was a fair crop of wheat on lots 3 and 4, a sparse crop on the south half of lot 2 and on lot 5, with a few stalks on the north half of lot 2 as well as on lots 1 and 6. Respondent provided photos of the lots, taken in June and July 2011 to support the determination of use for the individual lots. Mr. Goodwin testified that he believed he was required to consider each parcel individually based on the teachings of the Division of Property Taxation in their Agricultural Land Classification class, as well as to follow office policy.

Respondent contends that each assessor's parcel must stand alone and that they view this as six subdivided individual lots for valuation as well as classification purposes. Respondent contends that the *Clarke* case is not determinative. Respondent further contends that the productivity of the land must lead to the obvious result of profit and that any crop that grew on lots 1 and 6 was incidental. Respondent cites the dissenting opinion of Justice Lohr in *Boulder County Board of Equalization v. M.D.C. Construction Company*, 830 P.2d 975 (Colo. 1992) as more important to this case in that the intent of Mr. Gray's poor "farming" could not have been to make a monetary profit.

Respondent assigned an actual value of $47,930.00 and a vacant land classification to lots 1 and 6 for tax year 2011. Respondent assigned an actual value of $2,590.00 and an agricultural classification to lots 2, 3, 4 and 5 for tax year 2011.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2011 classification and corresponding valuation of lots 1 and 6 was incorrect.

Although the growth was accurately described as "sparse" on lots 1 and 6, Petitioner presented evidence showing that wheat had been planted, had grown on all six lots and then had been harvested and sold. While it would appear that Mr. Gray made a minimal profit, if any on wheat

production, the Board was convinced that it was his intent to make a profit, and that wheat had been grown to at least some extent on all six lots. This qualifies him for agricultural classification under the definition of farm as stated at Section 39-1-102 (3.5), C.R.S.:

> "Farm" means a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit."

As previously determined by Respondent for lots 2,3, 4 and 5, the Board finds that lots 1 and 6 can be reclassified for tax year 2011 because of the inclusion and use of decreed water rights, as defined in Section 39-1-102 (1)(IV), C.R.S.:

> "A parcel of land...used as a farm or ranch, as defined in subsections (3.5) or (13.5) of this section, if the owner of the land has a decreed right to appropriated water...for purposes other than residential purposes, and water appropriated under such right or permit shall be and is used for the production of agricultural or livestock products on such land."

The Board further finds that lots 1 and 6 qualify for agricultural use both on an individual bases as well as part of an "integrated larger parcel" as defined in the case of *Douglas County Board of Equalization v. Edith*, 921 P.2d 717,722 (Colo. 1996). In that case, the court concluded:

> "that this determination is a factual one, 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."

Convincing evidence was presented to convince the Board that there were no specific boundaries (such as fencing) between the lots, all six lots were planted and harvested as a unit, and although the yield varied between the southern and northern portions of the property, all six lots had wheat growing, thereby meeting the definition of a "farm" based on the surface use.

The Board concludes that the classification of lots 1 and 6 should be agricultural and that the actual value of those lots should be reduced to $2,590.00 per lot.

ORDER:

Respondent is ordered reclassify lots 1 and 6 as agricultural and to reduce the 2011 actual value to $2,590.00.

The Montrose County Assessor is directed to change their 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 15th day of November, 2011.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Sondra W. Mercier

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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