

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

Docket No.: 60466

Petitioner:

CUB CREEK RANCH LLC,

v.

Respondent:

**JEFFERSON COUNTY BOARD OF
COMMISSIONERS.**

ORDER ON RESPONDENT'S MOTION TO DISMISS

THIS MATTER came before the Board of Assessment Appeals on Respondent Jefferson County Board of County Commissioners' Motion to Dismiss ("Motion to Dismiss") on August 27, 2012, Debra A. Baumbach, Louesa Maricle and Brook J. Leer presiding. Respondent was represented by James Burgess, Esq. Petitioner was represented by William A. McLain, Esq.

Petitioner is protesting the 2009 classification of the subject property which consists of 20 lots located in Jefferson County, Colorado, schedule numbers 449230, 449248-51, and 449253-670. Respondent has classified the subject as vacant land for the 2009 tax year, valuing the property at \$7,430,000. Petitioner contends that the subject's proper classification for 2009 should be agricultural, valued at \$960. Petitioner is requesting an abatement/refund of taxes on the subject property based on the agricultural classification for the 2009 tax year.

Respondent argues that Petitioner's abatement petition for tax year 2009 should be dismissed pursuant to Section 39-10-114(1)(a)(I)(D), C.R.S., which states in relevant part:

No abatement or refund of taxes shall be made based upon overvaluation of property if an objection or protest to such valuation has been made and a notice of determination was mailed to the taxpayer pursuant to section 29-5-122. . .

Respondent contends that Petitioner has protested the valuation of the subject property and subsequently received a Notice of Determination issued by the Jefferson County Assessor's Office on July 9, 2009. Thus, citing Section 39-10-114(1)(a)(I)(D), C.R.S., Respondent argues that Petitioner is barred from seeking an abatement on the issue of overvaluation for the 2009 tax year.

In response, Petitioner points out that while Section 39-10-114(1)(a)(I)(D), C.R.S. applies only to those abatement petitions that are based on the overvaluation arguments, Petitioner's

appeal is based on the erroneous valuation argument. Petitioner contends that Respondent's failure to classify the subject as agricultural for 2009 was an erroneous valuation.

The term "overvaluation," as used in Section 39-10-114(1)(a)(I)(D), C.R.S. refers to a factual issue as opposed to "erroneous valuation" which is a legal issue. See *Boulder Country Club v. Boulder County Bd. of Comm'rs*, 97 P.3d 119, 123 (Colo. App. 2003). The determination of whether the use of the property constitutes actual agricultural use is primarily a factual question. See *Douglas County Bd. of Equalization v. Clarke*, 921 P.2d 717,721 n.5 (Colo. 1996).

The present case involves the question of the proper classification of the subject property. The grounds for Petitioner's appeal are stated on the Petition to the Board of Assessment Appeals, as: "[t]he property is currently classified as vacant land. The property has been used in an agricultural endeavor for many years. The property qualifies as agricultural by statute."

The Board concludes that Petitioner's abatement appeal is based entirely on the overvaluation argument. At the hearing, Petitioner did not present any erroneous valuation arguments for the Board's consideration. Petitioner's assertion that the property has been used for agricultural purposes for many years contemplates a factual, rather than legal determination. Accordingly, the Board concludes that Petitioner is barred from seeking an abatement/refund of taxes on the subject property for the 2009 tax year.

ORDER:

Respondent's Motion to Dismiss is granted. Petitioner's appeal is hereby dismissed.

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 September, 2012.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Louisa Maricle

Louisa Maricle

Brooke B. Leer

Brooke B. Leer

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

Milla Crichton

Milla Crichton

