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COURT OF APPEALS, STATE OF COLORADO
2 East 14th Avenue
Denver, Colorado 80203

Appeal From State of Colorado Board of Assessment Appeals

Docket No.: 59454

Petitioner-Appellant:

WILLIAM L. COYLE et al.,

Respondents-Appellees:

DOUGLAS COUNTY BOARD OF EQUALIZATION; DOUGLAS COUNTY ASSESSOR'S OFFICE, TERI COX, as Douglas County Assessor; and VIRGINIA WOOD, as an employee of said Assessor's Office.

Appellee:

COLORADO STATE BOARD OF ASSESSMENT APPEALS, DIANE M. DEVRIES and AMY J. WILLIAMS, as Members of said Board.

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Case Number: 13CA907

ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer Brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g). It contains 2,892 words.

The brief complies with C.A.R. 28(k).

Respondents-Appellees agree that the issues have been preserved for appeal and that the standard of review has been properly applied.

OFFICE OF THE COUNTY ATTORNEY
DOUGLAS COUNTY, COLORADO

By: *s/ Meredith P. Van Horn*
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Assistant County Attorney

Pursuant to C.A.R. 30(f), a duly signed original is on file in the Office of the County Attorney, Douglas County, Colorado

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2. Did the Board of Assessment Appeals correctly determine the value of Petitioner-Appellant's Property as required under Colo. Const., art. X § 20(8)(c) and C.R.S. § 39-1-103(5)(a)?

II. STATEMENT OF THE CASE

A. Nature of the Case

This case involves an appeal by Petitioner-Appellant William L. Coyle ("Petitioner") of an Order of the Board of Assessment Appeals ("BAA") denying his challenge to the classification as residential for *ad valorem* property tax purposes of the residence and 33.861 acres of land located at 7800 Crowfoot Valley Road, Parker, Douglas County, Colorado (the "Property"). Petitioner contends that the Property should be classified as agricultural land under C.R.S. § 39-1-102(1.6) as roughly seven (7) acres of the Property is used as a tree farm.

The assessment date of the Property for the tax year in question, 2011, is January 1, 2011. *See*, C.R.S. § 39-1-105 ("All taxable property, real and personal,

within the state at twelve noon on the first day of January of each year, designated as the official assessment date, shall be listed, appraised, and valued for assessment in the county wherein it is located on the assessment date."). The actual value of the Property is determined as of the assessment date of June 30, 2010. The Property was properly classified as residential by the Douglas County Assessor ("Assessor") with an actual value of $530,893 for tax year 2011.

B. Course of Proceedings and Disposition in the Board of Assessment Appeals

Petitioner protested both the change in classification and the assigned valuation of the Property; which protest was denied and a Notice of Determination mailed to Petitioner on August 15, 2011. The November 2, 2011, decision of the Douglas County Board of Equalization ("CBOE") affirmed the classification of the Property as residential with an actual value of the Property of $530,893. On November 30, 2011, Petitioner submitted his petition to the BAA appealing the decision of the CBOE.

After a hearing before the BAA on March 11, 2013, at which Petitioner was present and presented his case to the BAA, the BAA issued its Order denying the petition on April 5, 2013. In its Order, the BAA stated that the Property was correctly classified as residential and that the value assigned to the Property of

$530,893 was correctly determined and was the actual value of the Property.

C. Statement of Facts Relevant to Issues Presented for Review

The Property consists of 33.861 acres on which a one-story ranch style residence is located. Rec. Doc. 14, CD page 30. The residence was constructed in 1907 and remodeled most recently in 2001. *Id*. The Property is close to the Town of Parker and the surrounding neighborhood generally consists of older homes, multi-family homes and commercial properties. Rec. Doc. 14, CD page 20.

Petitioner stated in his 2010 Agricultural Land Classification Questionnaire that trees are grown on seven (7) acres of the Property. Rec. Doc. 15, CD page 35. Inspections of the Property on May 5, 2010 and August 26, 2010 by the Assessor revealed that the trees grown on the Property were not being harvested and replanted such to demonstrate the ongoing operations of a tree farm. The photographs of the Property taken by the Assessor demonstrate a plethora of dead trees and overgrown grass and weeds, but no demonstrable tree farm growing and harvesting activities. Rec. Doc.15, CD pages 28 -30 and pages 41- 46.

III. SUMMARY OF ARGUMENT

1. The BAA was correct in finding that the Property is classified as residential because the property is not used as a farm, as defined in C.R.S. § 39-1-102(3.5), and is therefore not entitled to the agricultural classification under C.R.S. § 39-1-102(1.6).

2. The actual value of the Property was determined correctly using the market approach to value.

IV. ARGUMENT

A. Standard of Review

An appellate court may only set aside the findings of the BAA in the following situations: if "it finds an abuse of discretion, or that the order was arbitrary and capricious, based upon findings of fact that were clearly erroneous, unsupported by substantial evidence, or otherwise contrary to law." *Boulder County Board of Commrs. v. HealthSouth Corp.*, 246 P.3d 948, 951 (Colo. 2011) (citing C.R.S. § 24-4-106(7)). "It is the function of the BAA, not the reviewing court, to weigh the evidence and resolve any conflicts." *Board of Assessment Appeals v. Sampson*, 105 P.3d 198, 208 (Colo. 2005). When the Court of Appeals reviews administrative decisions, such as those of the BAA, "…competent evidence is the same as substantial evidence. And, the substantial evidence

standard requires that there be more than merely 'some evidence in some particulars' to support an administrative body's decision." *Burns v. Board of Assessment Appeals*, 820 P.2d 1175, 1176 (Colo.App. 1991) (citations omitted). As stated in *Andrew v. Teller County Board of Equalization*, 284 P.3d 172,174 (Colo. App. 2012), "the BAA's classification determination must be sustained on judicial review if it has a reasonable basis in law and is supported by substantial evidence in the record as a whole."

In a *de novo* proceeding before the BAA, the taxpayer bears the burden of proving "that the assessor's valuation is incorrect by a preponderance of the evidence..." *Sampson*, 105 P.3d at 204. A review by this Court is based on the findings of the BAA, which will not be disturbed if supported by the evidence on record. *Gyurman v. Weld County Board of Equalization*, 851 P.2d 307, 310 (Colo.App.1993).

B. <u>Petitioner-Appellant Did Not Meet His Burden of Showing that the Residential Classification of the Property is Incorrect.</u>

Under C.R.S. § 39-1-102(1.6)(a), land qualifies as agricultural if it meets three elements: (1) that it was used the previous two years as agricultural land; (2) that it presently is used as a farm or ranch, as defined in C.R.S. § 39-1-102(3.5); and (3) the land must have been classified or eligible for classification as

"agricultural land" during the ten (10) years preceding the year of assessment. A farm is defined in C.R.S. § 39-1-102(3.5) as 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."

Another source of determining the classification of property for assessment is the Assessor's Reference Library ("ARL") which is binding on assessors and entitled to judicial deference. *El Paso Board of Equalization v. Craddock*, 850 P.2d 702, 704-5 (Colo. 1993). The ARL states that a farm has four elements: (1) "The land must produce agricultural products"; (2) "The products must be grown in the soil"; (3) "The primary purpose of the activity is to obtain a monetary profit"; and (4) "*A full cycle of agricultural farming activity includes planting, growing, harvesting and selling the agricultural product.*" *3 Assessor's Reference Library § 5.17* (emphasis added). Tree farms are further defined by the ARL as "…agricultural operations which plant, cultivate and harvest trees for sale on a wholesale or retail basis. Inputs to the lands, e.g., fertilizer, pesticides or other cultivation activities, are indicators the land is being used as a farm as defined by § 39-1-102(3.5), C.R.S." *Id*. at 5.30. In addition, tree farms "should generally receive agricultural land designation *if they plant and grow trees in the soil, cultivate and fertilize the trees, and harvest and sell the trees on a regular basis*.

The land must also be used for the primary purpose of obtaining a monetary profit as stated in § 39-1-102(1.6)(a)(I), C.R.S." *Id*. at 5.31 (emphasis added).

During the proceedings before the BAA, Petitioner bore the burden of demonstrating by a preponderance of evidence that the County's classification of the Property as residential was incorrect. Petitioner did not produce sufficient evidence to show that the Property qualified as agricultural during the pertinent time period of the years 2009, 2010 and 2011. Specifically, Petitioner did not produce evidence showing that the Property was a farm: that the trees were planted, cultivated, and harvested on a regular basis.

Petitioner submitted five exhibits to the BAA, Rec. Docs. 8 through 12, which included checks, photographs, receipts, and a lease. Only two of these documents provide any evidence that the Property was used as a tree farm during the years 2009 through 2011: (1) two receipts for tree sales dated March 16, 2010; and (2) undated photographs which Petitioner testified he believes were taken in 2010. Rec. Doc. 9, CD pages 2 to 4 and Rec. Doc. 19 - Transcript, CD page 23, line 23 to page 24, line 25.

The remainder of Petitioner's exhibits do not provide evidence that the tree farm was operating during 2009 to 2011. Petitioner submitted four checks for items such as painting and cleaning, Rec. Doc. 8, CD page 2; an invoice for fence

repair materials, *Id*.; a lease of the Property which was executed on December 15, 2011, which is outside of the time period for analysis, Rec. Doc. 10; an invoice for the installation of a fence on January 28, 2012, again outside the time period; Rec. Doc. 11; and finally, Rec. Doc. 12 which consists of undated photographs of cattle. None of these documents refute the evidence provided by the County demonstrating that the property is no longer used as a tree farm.

The BAA heard testimony from Virginia Wood, an appraiser for Douglas County, stating that she received no evidence from Petitioner demonstrating tree farm activities and saw no evidence on inspections of the Property of an ongoing tree farm operation. Rec. Doc. 19 - Transcript, CD page 38, line 6 to page 39, line 8. No receipts were provided to the Assessor by Petitioner for seedlings or fertilizer or other agricultural inputs which would demonstrate the Property's use as a tree farm. *Id*. at 38, lines 6 to 16. Ms. Wood testified she saw no evidence of water inputs during her site visits. *Id*. at 38, lines 17 to 18. The photographs found in Rec. Doc. 15, CD pages 28 to 30 and pages 41 to 46 do not demonstrate ongoing cultivation and tree harvesting operations, as is required by the Colorado Revised Statutes and the ALR.

Under C.R.S. § 39-1-102(1.6)(a)(IV), agricultural land may also be land that is "used as a farm or ranch … if the owner of the land has a decreed right to

appropriated water granted in accordance with article 92 of title 37, C.R.S., or a final permit to appropriated groundwater granted in accordance with article 90 of title 37, C.R.S., 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 Record contains no documentation regarding a groundwater permit or decreed right to appropriated water. Petitioner testified that an irrigation system was installed in the 1980's on the portion of the Property where trees are grown. Rec. Doc. 19 - Transcript, CD page 18, line 19 to page 19, line 11. Petitioner did not supply a copy of the decree or permit to the BAA, or to the Assessor, as an exhibit. Even if Petitioner provided a copy of the decree or permit, under C.R.S. § 39-1-102(1.6)(a)(IV), the Property must still qualify as a farm. As discussed above, this Property does not meet the requirements of a farm under either C.R.S. § 39-1-102(3.5) or the ARL.

Petitioner failed to provide any exhibits or testimony to the BAA of seedling purchases, fertilizer purchases and application, or other cultivation activities. Petitioner likewise did not demonstrate that there is ongoing farming activity on the Property. He failed to refute the County's evidence that his property is not a farm, an essential element of the definition of agricultural land under C.R.S. § 39-1-102(1.6)(a). Petitioner was unable to prove by a preponderance of the evidence

that the Property was incorrectly classified by the Assessor and is entitled to agricultural classification.

C. The Property's Actual Value as Residential Property was Determined Properly.

The Colo. Const., art. X § 20(8)(c) and C.R.S. § 39-1-103(5)(a) state that the only methodology an assessor may use in valuing residential property is the market approach. The market approach "shall require a representative body of sales, including sales by a lender or government, sufficient to set a pattern, and appraisals shall reflect due consideration of the degree of comparability of sales, including the extent of similarities and dissimilarities among properties that are compared for assessment purposes." C.R.S. § 39-1-103(8)(a)(I). Under the market approach, the assessor is limited to reviewing comparable properties that have been sold during the base period which, in this case, is the period from January 1, 2009 to June 30, 2010. C.R.S. § 39-1-104(10.2)(d). If the Assessor is unable to find comparable sales during the base period he or she may search for sales that occurred in the six months previous to the base period, and any additional six month periods going back five years preceding the assessment date. *Id.* In this case, the Property was valued based on actual value determined on the appraisal date of June 30, 2010 and assessed on the assessment date of January 1, 2011.

The ARL states that for tracts such as the Property, comparable sales may be chosen based on acreage method, "useful in the valuation of large residential tracts," or the site method, useful when the parcel is "land that has been improved or otherwise readied for its intended use." *5 Assessor's Reference Library, § 2.19*. The Property is a large residential tract of land that has been improved with a residence. Assessors make adjustments to the comparable sales "so that they become as similar as possible to the subject property." *5 Assessor's Reference Library, § 2.20*. The adjustments are made to the sale prices of the compared properties and "adjusted sales prices then become indicators of value for the subject property." *Id*. Of importance, the ARL states that when there is a limited pool of comparable sales, "[i]t is always better to adjust sales than to delete sales from the analysis." *Id*. The ARL advises that adjustments may be made as follows:

1. Adjustments for atypical financing such as below market seller financing, favorable assumed mortgages, or points paid by the seller;
2. Adjustments for time, i.e., trending sales to the appraisal date;
3. Adjustments for property characteristics, e.g., location, access, topography, soil conditions.

5 Assessor's Reference Library, § 2.20.

Jerry McLeland, an appraiser with Douglas County, reviewed three

comparable sales in determining the actual value of the Property. Rec. Doc. 14, CD page 21. All comparable sales occurred within the base period. *Id.* Mr. McLeland testified before the BAA regarding the comparable sales and the various adjustments he used to develop the value of the Property. Rec. Doc. 19 - Transcript, CD page 71, line 1 to page 75, line 15. Mr. McLeland made adjustments to the comparable sales based on acreage (Comparable #1), site (Comparable #2), a short sale influence (Comparable#3), and amenities of the comparable properties such as walk-out basements and types of heating. Rec. Doc. 19 – Transcript, CD page 73, line 8 to page 75, line 4.

Under C.R.S. § 39-1-103(5)(a), only the actual use of the Property as of the date of valuation may be calculated. However, actual value is synonymous with market value and "the reasonable future use of real property is an element of its fair market value under its technical definition as well as its common law interpretation in Colorado and elsewhere." *Colorado Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146,153 (Colo.1988). The Colorado Supreme Court further stated in *Colorado Arlberg Club*, "we conclude that reasonable future use is relevant to a property's current market value for tax assessment purposes." Mr. McLeland notes in his report that the Property's location is superior and that it has the potential for "commercial-type development" which is a reference to the

fact that the Property was listed for sale. Rec. Doc.15, CD pages 53 to 58. This type of reasonable future use may be considered by Mr. McLeland in his assessment and may contribute to why in his assessment the Property is valued at the higher end of the range of values noted in the charts in Rec. Doc. 14, CD pages 21 and 42.

Mr. McLeland's chosen comparable sales and adjustments to the comparable sales listed are well within the bounds of what may be considered by assessors in providing opinions of value, In addition, his consideration of the reasonable future use of the Property was not incorrect. The Order of the BAA on the value of the Property was neither an abuse of discretion nor arbitrary and capricious. As the fact finder, the BAA weighed all evidence submitted to it and determined that the assessed valuation of the Property was correct at $530,893.

V. CONCLUSION

There is substantial evidence in the record as a whole to support the BAA's finding the Property is residential, and Petitioner has failed to meet his burden of proving to the Assessor's classification is incorrect. The BAA's Order that the Property be valued at $530,893 is supported by evidence as is demonstrated in the Record and is not clearly erroneous nor arbitrary and capricious.

Respectfully submitted this 5th day of November, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER BRIEF was electronically filed via ICCES on all parties of record, this 5th day of November, 2013, addressed to:

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Pursuant to C.A.R. 30(f), a duly signed original is on file in the Office of the County Attorney, Douglas County, Colorado