

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>GUY AND ELIZABETH S. PAQUET,</p> <p>v.</p> <p>Respondent:</p> <p>DOLORES COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Brent W. Nichols, Esq. Fairfield and Woods, P.C.</p> <p>Address: 1700 Lincoln Street, Suite 2400 Denver, Colorado 80203</p> <p>Phone Number: (303) 830-2400</p> <p>Attorney Reg. No.:</p>	<p>Docket Number: 37131</p>
<p>ORDER (On Retaining Jurisdiction)</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 9, 2001, Mark R. Linné, Karl Von Burg, and Karen E. Hart presiding. Petitioner was represented by Brent W. Nicholls, Esq. Respondent was represented by Todd M. Starr, Esq., via telephone conference call.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**LOTS 1-9 WESTFORK VILLAGE SUB (Dolores County
Schedule Nos. 508108400016-19, 508108400021, 508108300022-
25)**

Petitioners are requesting an abatement/refund of taxes on the subject properties for tax year 1999. The subject properties consist of 9 parcels of land totaling 126.87 acres.

ISSUES:

Petitioners:

Petitioners contend that the subject properties should be classified as agricultural based on the actual use of the property. The subject properties meet the definition of agriculture under three statutory definitions. There are water rights on the property, it was classified as agriculture for three years prior to the subject tax year of 1999, and the horses located on the property were breeding and draft horses. The horses were used to make a profit.

Respondent:

Respondent contends that the change in classification was a result of three drive-by inspections and a lack of requested documentation. Grazing alone does not qualify the property for agricultural classification; there must be a profit obtained. Petitioners' statements regarding their ranching operation are inconsistent.

FINDINGS OF FACT:

1. Petitioner, Mr. Guy Paquet, presented an indicated value of \$212,704.00 for the subject properties based on an agricultural classification.
2. Mr. Paquet testified that he had not received any notices of value regarding a change of classification. He first knew the classification was changed when he received the tax notices in January of 2000. He sent a letter to the assessor regarding the classification change on January 23, 2000. He admitted that he did not refer to the agricultural status issue in his letter. He believed the subject properties should be agriculturally classified. However, the assessor told him they did not qualify, as they had pleasure horses. Therefore, he appealed based on a residential classification and value.
3. Mr. Paquet testified that he received a letter dated April 4, 2000 from Mr. Starr. The letter stated that the agricultural status was still unclear and the mere fact that the property had been subdivided was not the problem; it was the use of the land that controlled the classification. He testified that the properties were used agriculturally for as long as he could remember. He believes they should be agricultural because there were horses on the property.
4. On April 12, 2000, Mr. Paquet wrote a response to Mr. Starr's letter. In the letter, he listed contact persons to verify agricultural use and stated that the property had been used for cattle and/or horses. The actual use of the subject properties had not changed since 1996, which was when the properties were purchased by Petitioners. The subject properties were classified as agricultural for years 1996, 1997, 1998, and 2000.
5. Mr. Paquet testified that they have deeded irrigation water rights. They use the water and periodically have done maintenance on the ditches. They have also had to rebuild the irrigation gate. They irrigate the land to support the horses.

6. Mr. Paquet testified that two different people had horses on their properties prior to the placement of his own horses.

7. Mr. Paquet testified that Mr. R.L. Brim had 7 horses on the land. Mr. Brim was the caretaker for the ranch and assisted with fences, irrigation ditches and general ranch chores. Part of his compensation was the benefit of having rent-free housing and horse grazing. Mr. Brim's full time job was co-owner of Colorado Hunting Expeditions. He used the horses for hunting and fishing excursions.

8. In 1999, Mr. John Stramel had horses on the land. Mr. Stramel is a general contractor and has done construction work on the subject properties. In return for pasturing his horses, Petitioners received discounted services from him. John Stramel also had an outfitting operation; some of the outfitting horses were located on Petitioners' property.

9. Mr. Paquet testified that his letter dated July 22, 2000, sent to Mr. Starr, stated all of his reasons for feeling that Petitioners' properties should be classified as agricultural. He further explained that he appealed the value placed on the property as non-agricultural, but felt that a classification other than agricultural was erroneous.

10. Mr. Paquet testified that he received notices of value in May of 2000, showing that the properties were returned to agricultural status.

11. Under cross-examination, Mr. Paquet testified that he did not file a protest to the notices of valuation as he did not receive them until after the tax notices were issued; he never did receive the original notices, only copies sent to him by the assessor. On numerous occasions, he has notified the county that they should use his California address. He admitted that he initially told the county that the subject properties could be used by his pleasure horses. He further admitted that his letter dated January 23, 2000, to the Delores County Commissioners, contained statements regarding his properties being grazed by his horses. However, he pointed out that he also stated that the properties had been and were still a ranch.

12. Under cross-examination, Mr. Paquet testified that Ms. Huskey could have obtained the necessary information she required from Petitioners to determine the proper classification by simply asking. He admitted that he had never provided Respondent with a 1040 Schedule F. He felt there was no point in providing it, as he would not agree to the abatement approval terms as suggested by the Respondent.

13. Under cross-examination, Mr. Paquet testified regarding the abatement request petitions. He admitted that he had signed them and that he had stated on the petitions that the property was not vacant, but owner/occupied residential. He admitted that the requested values on the petitions ranged from \$30,220.00 to \$81,973.00. Mr. Paquet testified that his initial abatement was for all 10 lots that he owned. However, the county only sent 9 petitions back to him for individual filings. Therefore, Lot 5A, where the house is located, has no abatement petition. The animals are also running on Lot 5A. He clarified that the requested value on the Board of Assessment Appeals' petition is listed as an agricultural value at \$212,704.00 for all 10 lots, not the total of the individual requested values on the 9 abatement petitions.

14. Under redirect, Mr. Paquet testified that they receive mail at the subject properties from May through November. Mr. Paquet reiterated that the initial petition was filed in January of 2000 for 10 lots. The county then sent him forms to replace his January filing, as Respondent wished to have individual petitions for each schedule number. He admitted that the values placed on the petitions were based on a market value, as provided by the county. He pointed out that he had indicated the properties were agricultural back in January, as well as with the County Board of Commissioners. He only agreed to settle for a residential value for all the lots, not part vacant, because he was told he could not be agriculturally classified. He subsequently did independent research that verified his original position, that the subject properties should be classified as agriculture.

15. Upon questioning from the Board, Mr. Paquet testified that the assessor returned the subject properties to an agricultural classification for tax year 2000. He executed a year 2000 lease with Mr. Gale Greenlee for cattle grazing. Mr. Greenlee had cattle located on the subject properties in 1996 and 1997, as well as prior to Petitioners' ownership. He did not file a petition for Lot 5A as it was already classified as residential. The grazing is rotated using movable fencing. Originally, he would have accepted the entire 10 parcels as residential classification without vacant parcels, but since he could not reach an agreement, he chose to continue to pursue an agricultural classification. He admitted that he does not file a 1040 Schedule F; therefore, he cannot furnish the form to the assessor.

16. In recross, Mr. Paquet testified that there is a large culvert that runs under County Road 38 at Cottonwood Creek, which allows the animals to cross under the road to graze the balance of the subject properties.

17. Petitioner, Ms. Elizabeth Paquet, testified that during 1999, she spent 6 to 7 months on the properties. There were outfitting horses located on the properties that belonged to John Stramel and R.L. Brim. She testified that they used the water rights; she does a lot of ditch work and she does all the irrigating. She testified that Exhibit P22 consists of photos of horses on the subject properties.

18. Petitioners' witness, Mr. John Stramel, testified that he ran an outfitting business in 1999. He had brood mares and used horses for trail rides and hunting. He also used draft horses for hay rides and chuck wagon dinners. He used the horses to make a profit in his outfitting business. He also helped the Petitioners with irrigation and moving electric fences. He had a building business and traded with the Paquets at a discounted hourly rate, charging a lesser fee of 10% for overhead for his work for them. The horses grazed the pasture in the summer and were penned and hayed in the winter.

19. Under cross-examination, Mr. Stramel testified that he was managing Lost Canyon Ranch in 1999; however, the horses on Petitioners' properties belonged to him personally.

20. Under redirect, Mr. Stramel testified that he knew Mr. R.L. Brim was an outfitter, as he is one of his competitors.

21. Petitioners are requesting a 1999 actual value of \$212,704.00 for the subject properties.

22. Respondent's witness, Ms. Pat Huskey, the Dolores County Assessor, presented an indicated value of \$1,058,330.00.00 for the subject properties based on the subdivision discounted market approach.

23. Ms. Huskey testified that notices of valuation were mailed in May of 1999 and no objection was filed. Petitioners first contacted her in January of 2000 when the County Board of Commissioners requested the Petitioners visit with her. She had not seen the subject properties being grazed for two years. After receiving the subdivision plat, she felt the properties were not being used agriculturally. However, she had been willing to return the subject properties to an agricultural classification upon receiving supporting documentation.

24. Ms. Huskey testified that Exhibit R4 is a vacant land questionnaire that was mailed to and returned by Petitioners. She used Petitioners' value from the questionnaire, then applied the DPT guidelines for subdivision discounting. The property was actively marketed in 1999.

25. Ms. Huskey testified that she drove past the properties three times in 1999 and saw no livestock. Petitioners had said the properties were not used. Petitioners received no money for the hay. Lot 5A is where the residence is and she has classified that parcel as residential.

26. Ms. Huskey testified that she considered the cost, market and income approaches. She applied the subdivision discount. She calculated the discount based on the subject properties' actual information. However, she also calculated and lowered the market value to what neighboring lots were selling for, and then reapplied the discounting procedure. She did not consider all the subject properties to be residential as there was no residential use, other than Petitioners riding their horses on the properties. Petitioners told her the horses were used for pleasure. She had not been told about the outfitters or their arrangements with Petitioners until today.

27. Under cross-examination, Ms. Huskey testified that she determined there was no agricultural usage based on three drive-by inspections in 1999, as well as the marketing of the land and her conversations with Petitioners. She observed horses in the corral, but not grazing on the land. The use of the water rights alone does not qualify the property as agricultural, as it does not produce an agricultural income. She never knew about the outfitting operations.

28. Under cross-examination, Ms. Huskey testified that she returned the subject property to an agricultural classification in 2000 because cows are now grazed on it, there is meadow hay ground, and there are water rights. The property had been classified as agricultural for at least 3 years prior to 1999.

29. Upon questioning from the Board, Ms. Huskey testified that she never saw horses in Petitioners' pasture. She has not heard anything in this hearing to change her position. All she has asked for is documentation regarding agricultural usage. She verified that there was hay cut and baled at Petitioners' properties, but she understood that the hay was given to someone and not sold. She indicated that the water rights had been used and hay had been grown in the previous tax years.

30. Respondent assigned an actual value to the subject properties for tax year 1999 as follows:

<u>Schedule Number</u>	<u>Actual Value</u>
508108400016	\$ 104,207.00
508108400017	\$ 104,834.00
508108400018	\$ 104,834.00
508108400019	\$ 104,834.00
508108400021	\$ 35,210.00
508108400022	\$ 104,834.00
508108400023	\$ 109,559.00
508108400024	\$ 107,352.00
508108400025	<u>\$ 282,666.00</u>
Total	\$ 1,058,330.00

31. In rebuttal, Petitioner, Mr. Guy Parquet, testified that he spoke with Ms. Huskey in May of 2000 and showed her a letter from Mr. Stramel regarding the pack horses that had been on the property in 1999.

32. In rebuttal, Respondent's witness, Ms. Pat Huskey, testified that she had never seen the letter from Mr. Stramel regarding his horses. She has never received documentation from Petitioners regarding agricultural usage. She questions the truthfulness of Mr. Parquet's testimony. She does not recall any conversations in May of 2000 with Petitioners regarding outfitters.

33. In rebuttal, Ms. Elizabeth Parquet testified that she spoke with Ms. Huskey in May of 2000 regarding the use of the properties by outfitters during 1999. She clarified that their personal horses were not placed on the properties until August of 2000. She admitted that the letter marked as Petitioner's Exhibit 11 indicated they used the properties "for their horses."

CONCLUSIONS:

1. Petitioners presented sufficient probative evidence and testimony to prove that the subject properties were incorrectly classified for tax year 1999.

2. Respondent argued that Petitioners' appeal was not timely filed. The Board finds no basis for this argument. If, upon receipt of notices of valuation, Petitioners do not file protests and notices of determinations are not issued, abatements are permitted so long as they are filed within the statutory time frame. Petitioners timely filed abatement petitions with the Dolores County Board of Commissioners. That Board held a hearing on July 17, 2000 but did not issue a decision until August 7, 2000. The Board of Assessment Appeals received Petitioners' appeal on September 5, 2000, within the 30-day period allowed for appeals. The Board concluded that Petitioners' appeal to the Board of Assessment Appeals was timely filed.

3. Regarding the proper classification of the subject properties, the Board finds that there has been inconsistent and conflicting documentation and testimony presented in this case. Petitioners testified that they originally requested their properties be returned to an agricultural classification. When told that this was not possible, they requested a residential valuation as a compromise to a vacant land classification. When that request was denied, Petitioners returned to their original request. Respondent's witness testified that she received conflicting information from Petitioners and has never received requested documentation to support an agricultural classification. She pointed out the conflicting exhibits involving vacant land discounting, agricultural usage, and residential classification requests.

4. Ultimately, the Board was most persuaded by the testimony of Mr. Stramel. Mr. Stramel testified that he pastured brood mares and draft horses on the subject property during 1999. Mr. Stramel also testified that he exchanged ranch labor as well as discounted construction-related services with Petitioners in exchange for the pasturing of his horses. Such exchange of labor and discounted services would constitute a monetary gain to Petitioners and the Board finds that Mr. Stramel's horses meet the definition of livestock. The Board concluded that the subject properties qualify for an agricultural land classification under C.R.S. 39-1-102 (1.6) (a) (I) (13.5).

5. Petitioners also claimed to have filed an appeal on ten lots. However, the Board had copies of nine petitions attached to the appeal. Therefore, the Board only has jurisdiction over the nine parcels for which it has Dolores County Board of Commissioner decisions.

6. Furthermore, Petitioners requested recovery of costs with interest. The request is denied.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioners based on an agricultural classification for the subject properties for tax year 1999.

The Board retains jurisdiction in this matter until two weeks from the date of this decision, by which time the Respondent must notify the Board in writing as to the adjusted 1999 value with the above-mentioned changes. The Board will then issue a final order based on the adjusted value.

DATED and MAILED this 7th day of May, 2001.

BOARD OF ASSESSMENT APPEALS

Mark R. Linné
Mark R. Linné

Karl Von Burg
Karl Von Burg

Karen E Hart
Karen E. Hart

This decision was put on the record

MAY 07 2001

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

Diane Von Dollen
Diane Von Dollen



37131.01

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>GUY & ELIZABETH S. PAQUET,</p> <p>v.</p> <p>Respondent:</p> <p>DOLORES COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Brent W. Nichols, Esq. Fairfield and Woods, P.C.</p> <p>Address: 1700 Lincoln Street, Suite 2400 Denver, CO 80203</p> <p>Phone Number: (303) 830-2400</p> <p>E-mail:</p> <p>Attorney Reg. No.:</p>	<p>Docket Number: 37131</p>
<p align="center">FINAL ORDER (On Retaining Jurisdiction)</p>	

THE BOARD OF ASSESSMENT APPEALS retained jurisdiction in this matter until two weeks from its May 7, 2001 Order, at which time the Respondent was to notify the Board in writing of the 1999 actual valuation of the subject properties.

FINDINGS OF FACT:

1. On May 23, 2001 the Board received Respondent's adjusted value for the subject properties.
2. The adjusted value for the subject properties for the agricultural land is \$203.00 for Schedule Nos. 508108400016 through 508108400019, 508108400021, 508108300022 through 508108300024; \$935.00 for Schedule No. 508108200025; for a total 1999 actual value of \$2,559.00.

ORDER:

Respondent is ordered to change the 1999 actual value of the subject properties based on an agricultural classification with \$203.00 allocated to land for Schedule Nos. 508108400016 through 508108400019, 508108400021, 508108300022 through 508108300024; \$935.00 for Schedule No. 508108200025; for a total of \$2,559.00.

The Dolores County Assessor is directed to change her records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result or Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 29th day of May, 2001.

BOARD OF ASSESSMENT APPEALS

Mark R. Linné

Mark R. Linné

Karl Von Burg

Karl Von Burg

Karl Von Burg

Karen E. Hart

Karen E. Hart

Karen E. Hart

This decision was put on the record

MAY 29 2001

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

Diane Von Dollen

Diane Von Dollen

