

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>GILBERT JAMES CARPENTER,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PARK COUNTY BOARD OF EQUALIZATION.</b></p>	▲
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Alfred W. Metzger, Jr., Esq. Address: 305 South Cascade Colorado Springs, Colorado 80903 Phone Number: (719) 471-4822 E-mail: Attorney Reg. No.:</p>	<p><b>Docket Number: 37874</b></p>
<p><b>ORDER (On Retaining Jurisdiction)</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on May 29, 2001, Debra A. Baumbach, Mark R. Linné, and Karen E. Hart presiding. Petitioner was represented by Alfred W. Metzger, Jr., Esq. Respondent was represented by Malcolm M. Murray, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**T10 R72 S17 NE4 W2SW4 NE4  
(Park County Schedule No. R0020856)**

Petitioner is protesting the 2000 actual value of the subject property, a 147.5-acre tract of land located within the Hay Creek drainage area in Park County. There are two cabins located on the property.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the property should be classified as agriculture, not residential. There are water rights utilized on the property, as well as the grazing of cattle and horses, haying of meadows, and testing of agricultural products.

### **Respondent:**

Respondent contends that the subject property has not been used for a profit. There have only been some horses and mules grazing. Some hay has been raised, but it has been used for pleasure horse consumption, not for a profit. This is a hobby ranch.

## **FINDINGS OF FACT:**

1. Petitioner, Mr. Gilbert James Carpenter, testified that the subject property has been under his supervision and operation since its purchase in 1968. The Carpenter's live in Oregon, but they return to the property every year around haying season. It is 147.5 acres in size and has been in continual agricultural production since it was homesteaded. It is in the Hay Creek watershed.

2. Mr. Carpenter testified that they own 3 water rights associated with the property. He believes his land qualifies for an agricultural classification under 39-1-102 (1.6) (a) (IV). The water rights are current and are used for livestock and domestic purposes.

3. Mr. Carpenter testified that an anonymous letter was written to the Park County Assessor, which precipitated the property reclassification. Mr. Carpenter reviewed the letter for the Board. He takes issue with the letter calling items "facts." Mr. Carpenter has been working with the Division of Wildlife (DOW) regarding big horn sheep. He believes the author of the letter is a seasonal DOW employee named "Sam." There is a mean-spirited tone to the letter, which he believes was written because "Sam" was run off the property. The Respondent never consulted him after receiving the letter.

4. Mr. Carpenter testified that there have always been people living on the property. They have a caretaker that takes care of the stock in his absence. The tenant is not paid, as he has been given the use of the cabin, stabling, pasture and hay in exchange for being the caretaker. The stock is rotated between pastures and cannot easily be seen at any one location.

5. Mr. Carpenter testified that he has developed products called "PLANeT FOOD" and has field-tested the products on his ranch. He believes his activities are clearly agricultural and testified that they produce income.

6. Mr. Carpenter testified that they started raising Appaloosa horses in the 1970s. The horses are both purebred and stock. They had been used for commercial packing in the Lost Creek Wilderness Area. He has a stock brand and still has the packing permit; he has not abandoned the business. The horses are registered brood stock. These horses were bred and raised by him. The subject property is being utilized as a ranch. The hay is fed to his horses and the neighbor's livestock. There is an exchange situation with his neighbor, Mr. Dunlap. Pasture is supplied in exchange for haying the property. The property is still being used as a ranch. The water rights are adjudicated and are being used. He has a concern regarding a change in use putting his water rights in jeopardy.

7. Mr. Carpenter testified that the subject property is one of three ranches that are operated cooperatively: the Rolling OM Ranch, the Hay Creek Ranch, and the Williams Ranch. The map in Petitioner's Exhibit A shows the subject and the two ranches that they lease. They are operated under "Holistic Resource Management," which is a pasture rotation program with extensive focussed grazing, then rotation to the next area. The stock is not present on the subject property at all times but are moved about within all three of the ranches. There are a total of 300 acres in the operation. He believes the county reached some unwarranted conclusions when they visited the property.

8. Under cross-examination, Mr. Carpenter testified that he spends a week or two on the property each year. He owns 4 horses that graze on the property. He has bred the horses. Some of the hay is used for his horses. The end of the 1980s is when they stopped outfitting.

9. Under cross-examination, Mr. Carpenter testified that Mr. Patton lives on the property half time and is not paid. Mr. Dunlap uses some of the hay. Mr. Dunlap has a couple dozen cows that are periodically located on the subject property. Mr. Dunlap's cattle, horses and mules use the subject property in exchange for the hay.

10. Under cross-examination, Mr. Carpenter testified that they leased the Williams Ranch property until the spring of 2000 for \$100.00 per year in cash and trade to take care of the property; the Williams have no stock. He maintains the fences, ditches and meadows in exchange for the lease.

11. Upon questioning from the Board, Mr. Carpenter testified that there is 40 acres of sub-irrigated meadow hay, with approximately 10 acres of irrigated hay on the hillside. They get about 230-250 bales of hay per season. The hay is premium high-mountain valley hay, which is highly sought after. His field test plots total approximately 1 acre. His product is a trace mineral soil amendment. Mr. Patton stays at the ranch about 3-4 days a week. The leased Williams Ranch is sub-irrigated pasture and meadow but has not been hayed recently. The subject property is operated in tandem with 2 other ranches, both of which are agriculturally classified. Two of his horses were born and bred by him three years ago. He has not bred horses in the last 3 years. He has always done an exchange for the hay. They have sold a ton or two of excess hay each year for the last 3 years.

12. In redirect, Mr. Carpenter explained that the hay meadows require a lot of maintenance to maintain the hay production. There is only one cutting of hay per year. Over the years, he has sold a ton or two of hay as production has allowed. It is quality that is an issue. The hay is sold to the Shriners' mule train.

13. Petitioner is requesting a 2000 actual value based on an agricultural classification for the subject property.

14. Respondent's witness, Ms. Kristy Gould, Chief Deputy Assessor of the Park County Assessor's Office, testified that they sent out an agriculture questionnaire and, based on that information and other information in their files, decided to reclassify the subject property as residential. The owner had reported only horses and haying of the property. The subject property had been classified as agriculture in 1999.

15. Ms. Gould testified that Sheri Tamminga from the Assessor's Office made a physical inspection at the time of the reclassification. Ms. Tamminga then made a more thorough investigation at a later date. Assessors are required to make an inspection before a change of classification occurs. They also spoke with the neighbors. She spoke with the Dunlaps on the phone and was told that the Carpenters did not breed or sell the horses, and that the hay production was only sufficient to meet the needs of the Carpenters' horses. Ms. Tamminga spent an entire day looking at the property and speaking to the neighbors. The property is fenced, with only horses on the property. Ms. Tamminga saw some of the Dunlaps' cattle located on their own property. She saw evidence of haying. Ms. Tamminga spoke with Mr. Dunlap and was told that the hay was used for the Carpenters' horses as well as Mr. Dunlap's horses and mules.

16. Ms. Gould testified that they found no evidence from either Mr. Carpenter or the neighbors that there was any income derived from the subject property. The land is not used for anything other than grazing the horses, and the horses are not producing an income.

17. Under cross-examination, Ms. Gould testified that page 4 of Respondent's Exhibit 2 was written by her. She used the word "pleasure" horses, as there was no income derived from the horses. She clarified that she spoke with Maggie Dunlap, not Mr. Dunlap. She testified that there has to be some evidence that there is an effort to make an income to qualify for an agricultural classification.

18. Upon questioning from the Board, Ms. Gould testified that decreed water rights would qualify the property for agriculture if the hay were sold rather than used for Mr. Carpenter's or his neighbor's horses. They got conflicting reports from the Dunlaps. They have not spoken with Petitioner. She has not heard anything today that would change her mind about the subject property classification.

19. In redirect, Ms. Gould testified that Mr. Carpenter did not provide any information regarding the water rights prior to today's testimony.

20. Respondent's witness, Sherry Tamminga, a Data Collector for the Park County Assessor's Office, testified that she made two physical inspections of the subject property. The first inspection was in June of last year. It is a beautiful ranch; only a small portion is hayed. There were more horses and mules located on the property at the time of the first inspection, around 11 of them. They were grazing on the hay meadow, which she guessed was maybe 20 acres in size.

21. Ms. Tamminga testified that you go through the Dunlaps' property and over a fence to access the Carpenter's third property. At the time of the second inspection, the meadow had been hayed. There are 7 outbuildings and some hay was stored in one of the buildings. The meadow was wet with diverted water from Hay Creek. She walked at least  $\frac{3}{4}$  of the property. She saw only 5 horses on the second visit. There was 1 cow "patty" on the easement between the two fences from the Dunlap ranch to the subject property. She never saw any other evidence of cows and never saw cow "patties" on the subject property.

22. Ms. Tamminga testified that she spoke to the Dunlap's hired hand on the first trip. He said the Carpenter's land was never used by Dunlap's cows. The Dunlaps got to graze their horses on the Carpenters' property in exchange for haying the meadow and keeping up the fences. The ranch hand said that Mr. Carpenter does not sell any of the hay.

23. On the second trip she spoke with Mr. Dunlap. He told her that, in exchange for having his horses on the Carpenter's property, he hays the meadow. The Carpenter's caretaker takes care of the horses. Mr. Dunlap said he put up 220-230 bales of hay on the subject property. She believes it would take 8 bales of hay per month per horse for feed, which would take all of the produced hay.

24. In recross, Ms. Tamminga testified that her second inspection was done in October after the County Board of Equalization hearing.

25. Upon questioning from the Board, Ms. Tamminga testified that Mr. Dunlap never pastures cattle on the Carpenter's property. She does not know what Mr. Dunlap does with his horses. The cow "patty" was on the easement between the two fences. The second visit was done in October.

26. Respondent assigned an actual value of \$132,664.00 to the subject property for tax year 2000.

## **CONCLUSIONS:**

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified and valued for tax year 2000.

2. Testimony indicated that the subject property is part of a three-ranch operation, and that the other two ranches are classified as agricultural land. The Board believes that the three ranches must be considered as one operation, and the reclassification of only the subject property would be inappropriate. The Board also believes that Petitioner's rotation management plan could account for the lack of cattle evidence on the subject property at the time of the inspections made by Respondent's witnesses.

3. It was not disputed that the Petitioner's neighbor, Mr. Dunlap, is a qualified rancher who owns both cattle and horses. Nor was it disputed that Mr. Dunlap harvests the hay crop on the subject property. Both parties also agreed that Mr. Dunlap grazes livestock on the subject property, although the type of livestock was in dispute. The Board is convinced that these activities would make the subject property an associated part of Mr. Dunlap's agricultural operation.

4. Furthermore, it was not disputed that an exchange of services occurs between Mr. Dunlap and the Petitioner. The Board finds that such an exchange of services constitutes a monetary profit. In addition, Petitioner also receives a monetary profit by selling his excess hay, when available.

5. Finally, the Board finds that the adjudicated water rights are used for the production of agricultural or livestock products on the land.

6. Based on careful examination of all the evidence and testimony presented, the Board concluded that the subject property meets the statutory agricultural land definition.

**ORDER:**

Respondent is ordered to reduce the 2000 actual value of the subject property based on an agricultural classification.

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 2000 value with the above-mentioned changes. The Board will then issue a final order based on the adjusted value.

DATED and MAILED this 9<sup>th</sup> day of July 2001.

**BOARD OF ASSESSMENT APPEALS**

Debra A. Baumbach  
Debra A. Baumbach

Mark R. Linne  
Mark R. Linne

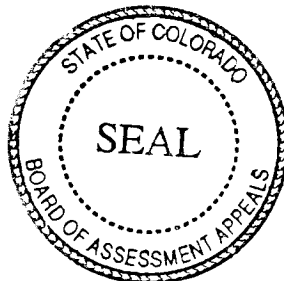
Karen E. Hart  
Karen E. Hart

This decision was put on the record

JUL 09 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



37874.01

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>GILBERT JAMES CARPENTER,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PARK COUNTY BOARD OF EQUALIZATION.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Alfred W. Metzger, Jr., Esq. Address: 305 South Cascade Colorado Springs, Colorado 80903 Phone Number: (719) 471-4822 E-mail: Attorney Reg. No.:</p>	<p><b>Docket Number: 37874</b></p>
<p align="center"><b>FINAL ORDER (On Retaining Jurisdiction)</b></p>	

**THE BOARD OF ASSESSMENT APPEALS** retained jurisdiction in this matter until two weeks from its July 9, 2001 Order, at which time the Respondent was to notify the Board in writing of the 2000 actual valuation of the subject property.

**FINDINGS OF FACT:**

1. On July 23, 2001 the Board received Respondent's adjusted value for the subject property.
2. The adjusted value for the subject property for the agricultural land is \$7,239.00, the improvements is \$48,464.00, for a total 2000 actual value of \$55,703.00.



**ORDER:**

Respondent is ordered to change the 2000 actual value of the subject property based on an agricultural classification with \$7,239.00 allocated to land, and \$48,464.00 allocated to improvements, for a total of \$55,703.00.

The Park County Assessor is directed to change his records accordingly.

**APPEAL:**

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

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

**DATED and MAILED** this 26<sup>th</sup> day of July, 2001.

**BOARD OF ASSESSMENT APPEALS**

*Debra A. Baumbach*

Debra A. Baumbach

*Mark R. Linné*

Mark R. Linné

*Karen E. Hart*

Karen E. Hart

This decision was put on the record

**JUL 26 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

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