


<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>3D RANCH,</p> <p>v.</p> <p>Respondent:</p> <p>ELBERT COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Anthony J. DiCola, Esq. Address: 400 Byers Avenue, PO Box 312 Hot Sulphur Springs, Colorado 80451 Phone Number: (970) 725-3315 Attorney Reg. No.: 5598</p>	<p>Docket Number: 37990</p>
<p>ORDER ON RETAINING JURISDICTION</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 20, 2002, Rebecca Hawkins and Debra A. Baumbach presiding. Petitioner was represented by Anthony J. DiCola, Esq. Respondent was represented by George Rosenberg, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Deer Creek Farm, Filing #2, Lots 42 through 95
(Elbert County Schedule Nos. 113146 through 131199)**

Petitioner is requesting an abatement/refund of taxes on the subject properties for tax years 1997, 1998 & 1999. The subject property consists of a total of 54 lots. The lots range in size from 1.535 to 1,967 acres. In 1998 there were 13 lots and an additional 16 lots in 1999 that were not owned by the Petitioner, therefore not the subject of this hearing.

ISSUES:

Petitioner:

Petitioner contends the Respondent has not classified the subject property correctly for tax years 1998 and 1999. The subject properties comply with the agricultural classification. The properties have been involved in the Production Flexibility Program and used agriculturally after it was subdivided.

Respondent:

Respondent contends that the subject properties have been subdivided and intended for residential development. There are twenty-nine of the fifty-four lots that have been developed. The Respondent contends the subject properties do not meet the requirements for an agricultural classification.

FINDINGS OF FACT:

1. The Petitioner, Delmer Zweygardt, did not present an indicated value for the subject. The Petitioner and Respondent have stipulated with regard to the valuation. The contention is over the classification.

2. Mr. Zweygardt testified he is president and owner of 3-D Ranch, which is a S-Corporation. He grew up in Saint Francis, Kansas, and then moved to Burlington, Colorado. He has been a farmer for most of his life. He has a wide range of experience in agricultural and cattle farming, including an 18,500-acre ranch. He has an ownership interest in a feedlot and was a partial owner of a commercial lot equipped to handle 20,000 head of cattle. He has also raised everything from wheat, corn, soybeans to black-eyed peas.

3. Mr. Zweygardt testified that he purchased the land in the 1980's and made a decision to develop a residential subdivision. All of the rules and regulations were followed; however, the commissioners denied the request. The request was taken to District Court for consideration. After all the issues were addressed, approximately ten months later the request for a subdivision was granted.

4. Mr. Zweygardt testified the land was always used for farming purposes. The land was enrolled in the Production Flexibility Program prior to 1993. After approval of the subdivision construction began on several of the lots. The association with the builder did not work out and he had to complete the construction himself. The farm program was notified of the proposed subdivision on the land. Their response was to inspect the subject once a year and remove all the developed lots from the program. All remaining lots not sold were still enrolled in the program. During the construction period any of the lots there were still available and any lots sold were utilized for grazing.

5. Under cross-examination, Mr. Zweygardt testified one of the functions of the corporation is to develop residential properties along with farming. To his recollection after the plat for the subdivision was approved there were several areas around the perimeter of the lots

with fencing in place. There were cattle grazing on the land either by accident or intentionally and the last year wheat was harvested on the northern portion was in 1996. Grazing was still being utilized during the development period.

6. Under redirect examination, Mr. Zwegardt testified that Filing 2 was used agriculturally and in the farm program in 1996 and 1997. At some time the land area comes out of the program or placed in another program.

7. In a response to a question during re-cross-examination, the witness testified that the land in the eastern section was signed up in the farm program and not used specifically for grazing after 1996. The land was still in the program during the years of 1996 through 1998. It is general procedure that the land area be grazed after coming out of the farm program.

8. Petitioner's are requesting the western portion of the Quarter Section Line that runs through the property be classified as agriculture for tax years 1998 and 1999. The eastern section of the property be classified as vacant land and will stipulate to the valuation.

9. Respondent's witness, Ms. Laura Forbes, Elbert County Assessor, testified she is charged with the legal responsibility for the classification of property within Elbert County. Colorado State Statutes are referenced to determine the classification of property for ad valorem purposes. Definitions are provided in C.R.S. 39-1-102 for the classification of land. There are three ways a property can be classified as agricultural. The first is farming which produces products from the productivity, grazing of animals or conservation practices.

10. Ms. Forbes testified that agricultural classification is a preferential classification and there is a significant tax advantage. If the land were to be removed from the agricultural classification it would be classified as vacant land resulting in a higher assessment level. The State of Colorado is a use state and the law requires the Assessor look at the actual use of the property as of January 1 of each year and every year. The guidelines relied upon by the Assessor's office is the Assessor's Reference Library.

11. Ms. Forbes further testified that there is larger degree of property within Elbert County that is in a transitional phase where it has been classified as agricultural and been platted for development. The property is inspected and, if the agricultural activity has ceased then it is classified as vacant land or if a residence has been constructed then classified as improved residential property.

12. The witness testified with respect to the GSI map, Respondent's Exhibit 1, indicating the Quarter Section Line that runs through the center of subdivision. As far back as 1996 the eastern section of the subdivision has always been classified as vacant land and not enrolled in any conservation program or has any application been filed for agricultural classification. There was no documentation within the property file to indicate any farming activity on the eastern section after 1996.

13. Ms. Forbes testified the western section of the Quarter Section Line had been in the PFC program and was classified as agricultural in 1996. At that time the western section was not in the process of being developed and not part of the subdivision. The plat for Deer Creek

Farms Filing 2 was filed in April of 1996 and some land area east of the line as well as some area west were combined together to assemble a subdivision.

14. The witness testified that during the assessment period the individual lots were broken out, some of the lots had a vacant land classification and vacant land value. All of the lots east of the line had a vacant land value and all the lots west of the line had an agricultural classification. In January of 1997 the classification changed from agricultural to vacant land on the west side when development started and several of the lots sold.

15. Ms. Forbes testified it was her understanding the classification on the property changed as a result of loosing the Production Flexibility Contract and the lack of non-agricultural uses on the property.

16. Ms. Forbes testified to the methodology for determining the classification of agricultural properties within Elbert County. Generally, the properties with smaller acreages are inspected annually to be sure there is an agricultural activity present. Larger acreages that cover many miles are impossible to inspect annually. For owners in the process of losing the agricultural classification and those in the process of re-qualifying for agricultural status will be inspected annually. For ranches, we look for physical evidence of animals and grazing on the property and for farms we look for crops that have been planted and harvested. We send out agricultural questionnaires to be sure the crops have sold.

17. Under cross-examination, Ms. Forbes testified that property that has been subdivided can be classified as agriculture under the statues. With regard to the property that was classified as non-agricultural in 1996, it was not known what the classification was for the ten years prior to that. There was no record if the subject property had been physically inspected during the years 1998 and 1999.

18. In response to questions from the Board, the witness testified the eastern section was a separate parcel. When the Petitioner applied for the subdivision and it was platted, then the two parcels merged. The parcel on the east was a separate parcel and the parcel on the west was carved out of a larger parcel. When they merged to assemble the subdivision, then the individual lots were broke out according to the plat.

19. Respondent's witness, Robert Harper, Chief Appraiser for the Elbert County Assessor's Office, testified he prepared the Summary Appraisal Report marked as Respondent's Exhibit 1 and is familiar with the subject property.

20. The Respondent presented and indicated full market value for tax year 1998 of \$41,250.00 per lot with a Present Worth Value of \$32,330.00 per lot with a four-year sellout. For tax year 1999 the indicated mark value was \$52,000.00 per lot with a Present Worth Value of \$45,740.00 per lot with a two-year sellout.

21. Mr. Harper testified the subject property was valued as individual lots under a subdivision. The statues require discounting, meaning to establish a present value of a future benefit of an anticipated income stream. The discounting is based upon an anticipated sellout period of the lots. For the purpose of the appraisal the property was classified at vacant land planned unit development.

22. Mr. Harper testified all three approaches to value were considered in the valuation. The income approach is most appropriate for agricultural land rather than a development. The cost approach utilized the cost buildup method. The majority of costs were derived from the Marshall & Swift Valuation Service. The costs were averages and may not reflect the actual costs. The market approach was most relied upon and the best method to value the subject.

23. Respondent assigned an actual value of \$30,880.00 per lot present worth value for tax year 1998 and an actual value of \$32,330.00 per lot present worth value for tax year 1999.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax years 1998 and 1999. Tax year 1997 was not an issue at this hearing.

2. The Board carefully considered all the admitted evidence and testimony and concluded that the subject properties meet the statutory agricultural land definition with respect to the western section. With respect to the eastern section the testimony was unrefuted that the property was not used for agricultural purposes and does not meet the agricultural criteria.

3. The Board concurs with the testimony from the Petitioner that the western section was used for grazing purposes during the platting and subdividing phase as well as the development stage. The Board heard testimony from the Respondent that the agricultural classification was removed from the western section as a result of several lots selling and the process of development in 1997 and was classified as agriculture prior to that. However, the Respondent testified one of the criteria for determining classification is to physically inspect properties that are in the process of losing the agricultural status as well as those properties in the process of re-qualifying. The Respondent testified there was no record that the subject was physically inspected for evidence that agricultural activity had ceased on the property during any of the stages of development.

4. The Board agrees that not only does the evidence of animals and grazing contribute to the agricultural criteria the actual use of the property as well. There was no dispute that the Petitioner's intention was to develop a subdivision. The records indicate that 13 of the 54 lots were improved in 1998 and 29 lots were improved for 1999. The Board believes the testimony from the Petitioner the lots were sold and developed on an individual basis and any lots not sold or developed were used for grazing purposes.

5. The Board also heard testimony from the Respondent the area has experienced a high degree of land in a transitional phase as well as a higher degree of development in the area. The Board was further convinced that if the Petitioner's sole intention was development of the subdivision, and not utilize any of the area for agricultural activity there would be a higher degree of development on the property as a result of the increased activity in the area.

6. The Board is not persuaded that the act of participation in a federal agricultural program is relevant to a property's agricultural status. The Elbert County Assessor is required to classify a given property based on specific criteria set forth within Colorado Revised Statutes and the directives of the Property Tax Administrator.

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

ORDER:

Respondent is ordered to reduce the 1998 and 1999 actual value of the western section based on the Quarter Section Line on an agricultural classification. The Board affirms the vacant land classification on the eastern section of the Quarter Section Line and affirms the value.

The Respondent is ordered to submit new 1998 and 1999 actual values of the subject properties as set forth in this order no later than ten days from the date of this order.

The Board retains jurisdiction in this matter until the Board has received the new values and the Board issues a Final Order in this matter.

DATED and MAILED this 7th day of January, 2003.

BOARD OF ASSESSMENT APPEALS

Rebecca Hawkins

Rebecca A. Hawkins

Debra A. Baumbach

Debra A. Baumbach

This decision was put on the record

JAN 07 2003

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

Penny S. Lowenthal
Penny S. Lowenthal



<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>3D RANCH INC.,</p> <p>v.</p> <p>Respondent:</p> <p>ELBERT COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Anthony J. DiCola, Esq. Address: 400 Byers Avenue, P.O. Box 312 Hot Sulphur Springs, Colorado 80451 Phone Number: (970) 725-3347 E-mail: Attorney Reg. No.: 5598</p>	<p>Docket Number: 37990</p>
<p>FINAL ORDER (On Retaining Jurisdiction)</p>	

THE BOARD OF ASSESSMENT APPEALS retained jurisdiction in this matter until ten days from the date of its January 7, 2003 Order, at which time the Respondent was to notify the Board in writing of the 1998 and 1999 actual valuations of the subject properties based on an agricultural classification.

FINDINGS OF FACT:

1. On January 29, 2003 the Board received Respondent's adjusted values for the subject properties.
2. The adjusted values for the subject properties are set forth in Attachments A and B.
3. Additionally, the Board revises its conclusion #6 to the following for clarification:
 6. The Board is not persuaded that the act of participation in a federal agricultural program is relevant to a property's agricultural status, on its

own merits alone. The Elbert County Assessor is required to classify a given property based on specific criteria set forth within Colorado Revised Statutes and the directives of the Property Tax Administrator. The primary criteria for agricultural classification is the actual use of the property, unless enrolled in a qualifying "conservation" program. In this case, there was also continued surface use that qualified the property for an agricultural classification. Petitioner's testimony was conflicting but ultimately convincing, that the property was grazed.

ORDER:

Respondent is ordered to change the 1998 and 1999 actual values of the subject properties to an agricultural classification as reflected in Attachments A and B.

The Elbert 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 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 21st day of February, 2003.

BOARD OF ASSESSMENT APPEALS

Rebecca A. Hawkins
Rebecca A. Hawkins

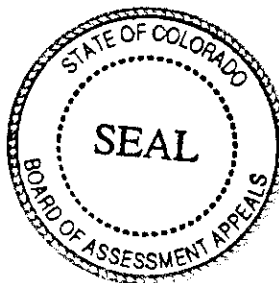
Debra A. Baumbach
Debra A. Baumbach

This decision was put on the record

FEB 21 2003

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

Penny S. Lowenthal
Penny S. Lowenthal



**3-D Ranch Abatement
Deer Creek Farm Filing 2, Lots 42 through 95
Abatement for 1998**

Original Schedule Number	1986 Class	Schedule Number	Lot No.	1998 Class	Actual Value 1998	Assessed Value 1998	1998 Mill Levy	1998 Tax	1998 Ag Value	1998 Ag Rounded	1998 Tax	Difference
105348	ag	113152	48	vacant	\$27,439	\$7,960	97.978	\$779.90	8,40336	10	\$0.98	\$778.93
105348	ag	113153	49	vacant	\$27,439	\$7,960	97.978	\$779.90	9,67764	10	\$0.98	\$778.93
105348	ag	113154	50	vacant	\$27,439	\$7,960	97.978	\$779.90	9,44148	10	\$0.98	\$778.93
105348	ag	113155	51	vacant	\$27,439	\$7,960	97.978	\$779.90	7,69998	10	\$0.98	\$778.93
105348	ag	113156	52	vacant	\$27,439	\$7,960	97.978	\$779.90	7,73424	10	\$0.98	\$778.93
105348	ag	113157	53	vacant	\$27,439	\$7,960	97.978	\$779.90	9,33816	10	\$0.98	\$778.93
105348	ag	113158	54	vacant	\$27,439	\$7,960	97.978	\$779.90	9,54448	10	\$0.98	\$778.93
105348	ag	*113167	63	vacant	\$27,439	\$7,960	97.978	\$779.90	9,29888	10	\$0.98	\$778.93
105348	ag	113166	64	vacant	\$27,439	\$7,960	97.978	\$779.90	9,04788	10	\$0.98	\$778.93
105348	ag	113169	65	vacant	\$27,439	\$7,960	97.978	\$779.90	7,55712	10	\$0.98	\$778.93
105348	ag	113170	66	vacant	\$27,439	\$7,960	97.978	\$779.90	7,55712	10	\$0.98	\$778.93
105348	ag	*113171	67	vacant	\$27,439	\$7,960	97.978	\$779.90	7,68504	10	\$0.98	\$778.93
105348	ag	113172	68	vacant	\$27,439	\$7,960	97.978	\$779.90	7,6752	10	\$0.98	\$778.93
105348	ag	113173	69	vacant	\$27,439	\$7,960	97.978	\$779.90	8,91012	10	\$0.98	\$778.93
105348	ag	*113174	70	vacant	\$27,439	\$7,960	97.978	\$779.90	7,872	10	\$0.98	\$778.93
105348	ag	113175	71	vacant	\$27,439	\$7,960	97.978	\$779.90	8,07864	10	\$0.98	\$778.93
105348	ag	113182	78	vacant	\$27,439	\$7,960	97.978	\$779.90	8,12784	10	\$0.98	\$778.93
105348	ag	113194	90	vacant	\$27,439	\$7,960	97.978	\$779.90	8,28036	10	\$0.98	\$778.93
105348	ag	113186	92	vacant	\$27,439	\$7,960	97.978	\$779.90	7,9458	10	\$0.98	\$778.93
105348	ag	113197	93	vacant	\$27,439	\$7,960	97.978	\$779.90	8,364	10	\$0.98	\$778.93
105348	ag	113199	95	vacant	\$27,439	\$7,960	97.978	\$779.90	8,45624	10	\$0.98	\$778.93
Total Value					\$576,219	\$167,160		\$16,378.00		\$210	\$20.56	\$16,357.43

Schedule number 105348 was classified in 1986 as agricultural with total actual land value of \$6,641. For 1998, this schedule had 70.02 acres of irrigated at \$5,488 actual value and 19.548 acres grazing at \$1,153 actual value.

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APAP COUNTY ATTORNEY

Jan. 10 2003 5:17PM HP LASERJET 3200

ATTACHMENT B

P. 3

3-D Ranch Abatement
Deer Creek Farm Filing 2, Lots 42 through 95
1999 Abatement

03 FEB -5 PM 2:39
 1064555
 1064555

Original Schedule Number	1996 Class	Schedule Number	Lot No.	Not Owned as of 1/1/99	1999 Class	Actual Value 1999	Assessed Value 1999	1999 Mill Levy	1999 Tax	1999 Ag Value	1999 Tax	Difference
105348	ag	113153	49		vacant	\$43,880	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
105348	ag	113154	50		vacant	\$43,880	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
105348	ag	113155	51		vacant	\$43,990	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
105348	ag	113157	53		vacant	\$43,880	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
105348	ag	113169	85		vacant	\$43,880	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
105348	ag	*113171	87		vacant	\$43,880	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
105348	ag	113172	68		vacant	\$43,880	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
105348	ag	113173	69		vacant	\$43,880	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
105348	ag	113175	71		vacant	\$43,880	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
105348	ag	113194	90		vacant	\$43,880	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
105348	ag	113196	92		vacant	\$43,880	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
105348	ag	113199	95		vacant	\$43,880	\$12,730	98.662	\$1,255.97	10	\$0.99	\$1,254.98
		Total Value		0		\$526,560			\$15,071.61	120		\$15,059.77

* These lots were originally sold in 1996 but resold at later dates
 Schedule number 105351 was classified in 1996 as vacant land
 For 1996, this schedule was classified as 0560 (Vacant Land) with an actual value of \$65,440
 Schedule number 105348 was classified in 1996 as agricultural with total actual land value of \$6,641
 For 1996, this schedule had 70.02 acres of irrigated at \$5,488 actual value and 19.548 acres grazing at \$1,153 actual value