

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>TRAER CREEK, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>EAGLE COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Kimberly E. Lord, Esq. Johnson & Repucci LLP</p> <p>Address: 1401 Walnut Street, Suite 500 Boulder, Colorado 80302</p> <p>Phone Number: (303) 442-1900</p> <p>E-mail:</p> <p>Attorney Reg. No.: 18802</p>	<p>Docket Number: 38417</p>
<p align="center">ORDER (On Retaining Jurisdiction)</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 4, 2002, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by Kimberly E. Lord, Esq. Respondent was represented by Diane H. Mauriello, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**SECT, TWN, RNG: 7-5-81 GRAVEL PIT; AVON STOLPORT
GROUND; SECT, TWN, RNG 8-5-81 PCLIN (Eagle County
Schedule Nos. 210307400003, 210512100005, 210307400004)**

Petitioner is protesting the 2001 actual value and classification of the subject properties, three mixed-use parcels of varying sizes located in Avon, Colorado. Only the vacant land areas of the three parcels that are reportedly grazed are in dispute.

ISSUES:

Petitioner:

Petitioner contends that the subject properties are mixed-use properties, and the vacant land portions are what is in dispute. The vacant land has been grazed by sheep and has been under lease since 1993. These facts are not in dispute. The properties have always been classified as agricultural until last year. Petitioner filed an appeal with the Eagle County Board of Equalization (CBOE) for a change in classification. The CBOE denied the appeal and Petitioner subsequently filed an appeal with the State Board of Assessment Appeals (BAA). Prior to the BAA hearing, Petitioner and Respondent's Counsel entered into a stipulation returning the subject properties' classification to agriculture. The CBOE refused to act on the stipulation.

Petitioner admits that the future use of the subject properties is for development, but the current use is agricultural, which is the overriding consideration for an agricultural classification. Future use cannot be considered in the classification determination, only the current use is to be considered.

Petitioner indicated that an undue hardship and unnecessary expense was placed upon Petitioner when a stipulation should have been entered into by the parties and the actual agricultural use of the subject properties was not disputed.

Respondent:

Respondent agrees with the stipulation of facts. However, Respondent believes the subject properties should be classified as vacant land and not agricultural land. There is a relationship between Traer Creek, its predecessor EMD Limited Liability Company, and Piney Creek Ranch; Mr. Post is either trustee or counsel for each of these parties. The subject properties are surrounded by development and will be developed in the future.

Respondent's Counsel indicated that the CBOE apparently had concerns regarding the classification, as the Eagle County Assessor's personnel, Mr. Mark Chapin, did not observe the reported sheep owned by Petitioner grazing the subject property, and that it is common knowledge that the subject property is being held for future development.

CONCLUSIONS:

1. The parties in this matter entered into a stipulation of facts, which was admitted as Joint Exhibit 1.
2. No witnesses were called in this matter.

3. Respondent assigned the following actual values to the subject properties, for 2001, based on a mixed-use classification:

<u>Schedule Number</u>	<u>Value</u>
R015311	\$ 716,270.00
R021166	\$ 767,860.00
R043982	\$ 626,030.00

4. The Board has carefully reviewed Joint Exhibit 1 and the pleadings of each Counsel. The Board concluded that the actual use of the disputed portions of the subject properties is and has been agricultural and as such, should be returned to an agricultural classification. Any speculative or known future use may not be considered when classifying the subject properties; only actual use may be considered for agricultural properties.

5. In addition, the Board agrees that the Petitioner incurred unnecessary expenses.

ORDER:

The Board retains jurisdiction for a period of fifteen (15) days from the date of this order to allow Respondent to submit values for the subject properties as agricultural grazing land.

In addition, the Board orders Respondent to remit the sum of \$300.00 to Petitioner to offset expenses incurred by Petitioner.

DATED and MAILED this 8th day of May, 2002.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

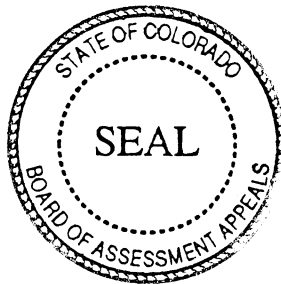
Karen E. Hart
Karen E. Hart

This decision was put on the record

MAY 07 2002

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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<p align="center">FINAL ORDER (On Retaining Jurisdiction)</p>	

THE BOARD OF ASSESSMENT APPEALS retained jurisdiction in this matter until fifteen days from their May 8, 2002 Order, at which time the Respondent was to notify the Board in writing of the 2001 actual valuation of the subject properties based on an agricultural classification.

FINDINGS OF FACT:

1. On May 23, 2002 the Board received Respondent’s adjusted values for the subject properties.

2. The adjusted values for the subject properties are as follows:

<u>Schedule No.</u>	<u>Agricultural Value</u>
R015311	\$2,870.00
R02166	\$3,300.00
R043982	\$ 660.00
Total	\$6,830.00

ORDER:

Respondent is ordered to change the 2001 actual values of the subject properties to an agricultural classification as reflected above.

The Eagle 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 of 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 29th day of May, 2002.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

Karen E. Hart
Karen E. Hart

This decision was put on the record

MAY 28 2002

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

Mary J. Helfer
Mary J. Helfer

