

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DOMINICK AMARI,</p> <p>v.</p> <p>Respondent:</p> <p>PARK COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Dominick Amari Address: P.O. Box 50825 Nashville, TN 37205 Phone Number: (615) 604-7616 Attorney Reg. No.:</p>	<p>Docket Nos.: 39344 & 39345</p>
<p>ORDER (On Retaining Jurisdiction)</p>	

THIS MATTER was heard by the Board of Assessment Appeals on January 24, 2002, Judge Nuechter and Karen E. Hart presiding. Petitioner appeared pro se via teleconference. Respondent was represented by Linda Michow, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**T11 R75 S16 SW4 A TRACT OF LAND IN SW4 DESC 480/949; FLG
12 LOT 5 EAGLES NEST RANCHES
(Park County Schedule Nos. R0030396, R0043092) (Docket No. 39344)**

**FLG 13 LOT 6 EAGLES NEST RANCHES
(Park County Schedule No. R0030405) (Docket No. 39345)**

Petitioner is protesting the 2001 actual value of the subject properties, three vacant land tracts, a 35-acre parcel with a "Tuff Shed" located upon it, a 35.36-acre parcel, and a 70.01-acre parcel that was formerly state land. The parcels are all contiguous and located in unincorporated Park County, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the “Tuff Shed” is not a dwelling, as listed by the assessor. The assessor also has the well and tree plantings shown on the incorrect parcel. All of the parcels are under lease and should be classified as agricultural.

Respondent:

Respondent contends that the shed on the property was classified as a “cottage,” based on observation and best information available. The properties were reclassified from agricultural due to a lack of use, which was verified by a physical inspection.

FINDINGS OF FACT:

1. The Board granted Respondent’s motion to consolidated Docket Nos. 39344 and 39345.
2. Mr. Dominick Amari, Petitioner, presented the appeal on his own behalf via teleconference call.
3. Based on the assessor’s prior year value, Petitioner presented an indicated value for the subject properties as follows:

<u>Schedule Number</u>	<u>Actual Value</u>
R0030396	\$ 334.00 (Docket No. 39344)
R0043092	\$ 668.00 (Docket No. 39344)
R0030405	\$ 1,336.00 (Docket No. 39345)

4. Mr. Amari testified that Schedule #R0043092 (Docket No. 39344) is a 70-acre parcel that has had no improvements done to the property since he purchased it, except for some tree planting. It is a very steep hill and there is no stream. He has had livestock leases for the property since his purchase.
5. Mr. Amari testified that the property was purchased in a state land auction, and it adjoins state property. The state put up a fence on the property line within one foot of his fence. The state opened the ground 350 yards from his property line for purposes of collecting surface water, which has caused runoff onto his property. He believes the state has caused a terrible eyesore, and it affects the value of his property. There was a shallow spring on his property, but it is now only a mud hole due to the state’s activity.

6. Mr. Amari testified that Schedule #R0030396 (Docket No. 39344) has a structure on the site that he classifies as a shed, but the assessor has classified it as a cottage. It is a “Tuff Shed” that cost him \$7,933.00 to build, including the on-site construction expenses. There is no electricity, well, water, septic tank, window covers or bathroom. The heat is a portable heater. The interior walls are sheet rocked but not painted. The floor is plywood. There are no finished levels in the shed. There are cabinets in the shed that are used for storage. The assessor has listed the square footage incorrectly. He has measured the property, and the square footage should be 363, including the loft. It is a 100% complete storage shed, not a 70% complete residence.

7. Mr. Amari testified that there are leases and animals on the property. It is contiguous to his other two properties and is under lease. The most recent lease was executed August 1, 2001 and has a five-year term. It had also been leased for the previous three years.

8. Mr. Amari testified that the property is located at the very top of a hill, and only approximately 50% of the property is buildable. It also borders state land. Due to the dirt work done on the adjoining state parcel, his surface water and well went dry except during a very rainy season; there is only three months a year when there is water available. When there is water available from the well, it is not potable. He has had to haul water from the town of Hartsel.

9. Mr. Amari testified that Schedule #R0030405 (Docket No. 39345), is contiguous to his other two parcels and also borders state land. Surface water is non-existent. The property is sloping. This property has northern exposure and is not a good solar property.

10. Mr. Amari testified that none of the Respondent’s comparables are located near the subject. The closest electrical service is four miles away and is very expensive to obtain. There is four miles of access road, which is a dead-end and only graded once a year. Cattle trucks have caused much road damage.

11. He does not feel that bordering state land makes his land more valuable. All of the properties are in the same location and views are the same for all three. These properties have not gone up in value. They have gone down in value due to the state pond construction project. Mr. Amari pointed out that the assessor’s exhibits indicate that his property is located in the least desirable portion of Park County.

12. Mr. Amari testified that the assessor’s photos and records are incorrect as to the proper location of the well and covering shed, as well as the tree plantings. They are actually located on Schedule #R0030396, not Schedule #R0030405.

13. Mr. Amari testified that he has followed the statutes for obtaining agricultural status. His properties are under grazing leases and there have been Forest Service tree plantings.

14. Under cross-examination, Mr. Amari testified that he purchased all three of the parcels within a two-year period. The 70-acre tract was purchased by patent. There is no stream or intermittent water supply located on the property. There is a ditch that flows only when and during a rain, and then runs into the ground. When he purchased Schedule #R0043092, there was a shallow spring, which was the only water that was available, and it ran in the springtime; it does not run anymore because of the state land pond construction.

15. Mr. Amari testified that cattle are usually grazed on the property during the months of July and August. Three years ago he had horses on the property; two foals were born on the property in 1999. He did not know what kind of horses they were. He observed two calves that were born on the property in 2000. His current lease is with someone he has known since the lessee was a child. They did everything verbally; he then put the terms in writing, which is what he understood the assessor required. The lessee is allowed to put five large animals on the property; he can put horses on it, but Mr. Amari prefers that no sheep be grazed. He executed the new lease because he no longer wanted horses on the property. In 1999 there were horses there all winter. Cattle were put on the property in the spring of 2000.

16. Mr. Amari testified that in 1996 he was told that a lease was all he needed, he was not aware that use was also required. There is tree activity on the property as well. There are barrels for water storage and troughs for livestock watering; there is evidence of animals there. Most of the cattle are found near the non-existent spring in the center of the property at the northwest side at the bottom of a steep hill, on Schedule #R0043092.

17. Regarding the storage shed, Mr. Amari admitted that he once had a storage space lease with another party, but the lease was not exercised. His shed measurements are 11.3' x 22'. There is also an attached woodshed. He does not use the building as a residence; he stays in a teepee when he is there. He added cabinets, windows, and a foundation to the shed. He did not get a building permit; he assumed "Tuff Shed" took care of that.

18. Mr. Amari testified that he has a forest management plan; the tree plantings can be seen in Respondent's exhibit. The trees are on Schedule #R0030396. He admitted that he did not have a written forest plan; however, the property is inspected annually. He has had an 88% success rate with the trees.

19. Upon questioning from the Board, Mr. Amari testified that Don Johnson was a previous name he used. He stores building supplies, a water trough, outdoor furniture, and a teepee in the shed. He uses the well to water the trees when there is water. He purchased the subject properties in 1989, 1990, and 1991. He has always had an agreement to have animals on the property. He personally saw foals and calves born on the property. He uses the livestock droppings for fertilizing the trees. The last time he was at the property was July 31, 2000. The trees have been planted in such a way that they do not need watered often.

20. In recross-examination, Mr. Amari testified that he feels the cattle lease and trees should qualify him for an agricultural classification.

21. Upon questioning from the Board, Mr. Amari testified that he was paid for the lease in 2001. As he was not at the property in 2001, he could not say for sure that animals were placed on the property, but he assumed they were. Mr. Amari testified that the water troughs and evidence of livestock use would be where the spring used to be, as that is where the best grass is located. He pointed out that Respondent's witnesses did not inspect this area of the properties.

22. Petitioner is requesting a 2001 actual value for the subject properties as follows:

<u>Schedule Number</u>	<u>Actual Value</u>
R0030396	\$ 334.00 (Docket No. 39344)
R0043092	\$ 668.00 (Docket No. 39344)
R0030405	\$ 1,336.00 (Docket No. 39345)

23. Respondent's witness, Ms. Jane Farris, a Data Collector with the Park County Assessor's Office, testified that she and Ms. Kristy Gould physically inspected the properties on June 19, 2001. There were no tanks or livestock on the properties. The subject properties consist of two lots in Eagles Nest Ranches and one metes and bounds property. The properties are fenced together as one parcel with three wires and an electric wire at the top. They walked the outer borders and also at least 15 acres near the south entrance gate. The grasses on the subject property were taller than those grasses outside the fence; the subject grass was up to 10 inches high. There were no animal paths, no heavy grazing areas, no animal droppings, and no live animals.

24. Ms. Farris testified that they found a structure that she considers a house with a shed attached, as well as a shed located over the well. She thought they looked like they were all located on the same property, the subdivided parcel, not the 70-acre tract. The shed had windows, a foundation, and it had drywall finish. She thought it looked like it was still in the construction process. They measured the shed but did not enter it. The construction materials they saw outside led her to believe the shed was a cottage.

25. Ms. Farris testified that the comparables used to value the properties were from Economic Areas 5 and 8, which have lesser values than other areas in the county, such as Bailey or Fairplay, for example.

26. In cross-examination, Ms. Farris admitted that she did not see the pond located on the state land; she was only looking at his property, not adjacent properties. She did not see a running spring, dam, stock tanks, or any water source. She did see a stream that she believed ran seasonally. They walked about 15 acres of the 70 acres, but they drove the borders.

27. Respondent's witness, Ms. Kristy Gould, a Licensed Appraiser and Deputy Assessor with the Park County Assessor's Office, presented an indicated value for the subject properties based on the market approach and vacant land classification as follows:

<u>Schedule Number</u>	<u>Actual Value</u>
R0030396	\$ 30,173.00 (Docket No. 39344)
R0043092	\$ 19,667.00 (Docket No. 39344)
R0030405	\$ 17,474.00 (Docket No. 39345)

28. For Schedules #R0043092 and #R0030405, Respondent's witness presented a list of 37 vacant land sales that had occurred in Economic Area 5, ranging in sales price from \$3,708.00 to \$98,336.00 and in size from 5.00 acres to 229.47 acres. It was unclear what adjustments, if any, were made to the sales.

29. For Schedule #R0030396, in addition to the above sales, Respondent's witness presented three comparable improved property sales ranging in sales price from \$36,404.00 to \$95,000.00 and in size from 628 to 972 square feet. After adjustments were made, the sales ranged from \$30,173.00 to \$33,453.00.

30. Ms. Gould testified that they saw a large structure on the property when they did their inspection. They did not know of it through the building department, as there was no building permit. They felt it was intended to be a residence due to the kitchen cabinets, windows, and drywall, which are not normally in a shed. They believed that the structure was not 100% complete, but was in the building process to be used as a residence. They determined there was no agricultural use and that the cottage building was omitted property. The other storage building housed the well and they removed its value from the tax roll.

31. Ms. Gould testified that the subject property was valued as one parcel, not as three individual tracts. This resulted in a benefit to the taxpayer, in that the prorated value for each parcel is less than if they were valued individually.

32. Ms. Gould testified that prior to 2001, the land was classified as agriculture. They had reviewed their files and the subject lease. They thought the use was questionable, so they did an inspection. Property classification is based on actual use; therefore, they reclassified the property to vacant land. After the inspection, they found the omitted property and changed the class to residential versus vacant land. The value was set using sales from the 18-month period of January 1, 1999 through June 30, 2000. They consider the location of state land next to the subject property to be desirable as a buffer. The economic areas were grouped together for analysis purposes.

33. In cross-examination, Ms. Gould testified that the building classification and percent complete were based on the appraisers' opinions. They have a guideline that determines a percent complete for a structure; however, she does not have the guideline with her. She felt that the intent of the building was for residential purposes.

34. Regarding the agricultural status, Ms. Gould testified that the agricultural questionnaire was a determining factor, as well as the lease being unclear. The old lease expired in 1998. They reviewed the subject property status due to conflicting information. They did not inspect the area around the old spring and did not notice a dam on the property.

35. Upon questioning by the Board, Ms. Gould testified that the June 19, 2001 inspection was the only time the subject properties were inspected. She does not believe that cattle could have been on the property at any other time, as she did not see evidence of livestock usage; the grass was too tall.

36. Respondent assigned an actual value to the subject properties for tax year 2001 as follows:

<u>Schedule Number</u>	<u>Actual Value</u>
R0030396	\$ 30,173.00 (Docket No. 39344)
R0043092	\$ 19,667.00 (Docket No. 39344)
R0030405	\$ 17,474.00 (Docket No. 39345)

37. Upon questioning from the Board, Ms. Gould testified that, after hearing Petitioner's testimony, she would now be willing to consider the subject property building located on Schedule #R0030396 to be a shed. Her recommended value for both sheds would now be \$11,275.00. The recommended adjusted value for this parcel would now be \$19,829.00.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject properties were incorrectly valued and classified for tax year 2001.

2. Ms. Gould testified that the presented values for the subject properties vary from the original assessor values, which are the only valuations shown on notices presented to the Board of Assessment Appeals. She testified that the assigned values as shown in Finding of Fact #36 were established by the Park County Board of Equalization (CBOE), although the CBOE notices do not state what values were upheld. Mr. Amari testified that he was not aware until he received Respondent's exhibits for this hearing that the valuation of the subject properties had been lowered by the CBOE. Ms. Gould acknowledged that Petitioner was likely unaware that the CBOE had established the presented values, as the notices sent to Petitioner simply state his petitions were denied. Based on Ms. Gould's testimony, the Board accepts the presented values as those established by the CBOE. However, the Board recommends that the Respondent modify its notice of determination forms in the future to allow notification to Petitioners of value changes.

3. The Board has carefully examined all the evidence and testimony presented in this case. The Board finds that Petitioner's properties do not qualify as agriculture under the Forest Land provision of C.R.S. 39-1-102(1.6)(a)(II). The parcel upon which the tree plantings are located is less than 40 acres, and the Forest Service did not report it to the assessor as being under a forest management plan, which is a requirement under this statute.

4. The Board does believe the properties qualify for an agricultural classification as a ranch under C.R.S. 39-1-102 (3.5).

5. Petitioner's leases appear to conflict with his testimony regarding the type of livestock allowed on the property. However, Petitioner received lease monies for the use of the property and testified that he had personal knowledge that livestock had grazed the property and that foals and calves had been born on the property in 1999 and 2000, respectively. Petitioner received lease monies for 2001 and assumes the property was used, but does not have personal knowledge that it was.

6. Respondent's witnesses properly inspected the properties before changing the classification, but there was only one inspection date, June 19, 2001. Petitioner testified that livestock are placed on the property in July and August of each year. Livestock could have been on the property at some later date and Respondent's witnesses would not have known of it. Respondent's witnesses said they did not see evidence of use, but admitted that they did not inspect the portion of the property where Petitioner claims the majority of livestock use occurs. The Board would have been better convinced that there was a lack of actual use had there been additional inspection dates.

7. Regarding the improvements on Schedule #R0030396 (Docket No. 39344), Respondent recommended a change in classification from a "cottage" to a shed and also recommended a reduction in the value of the improvements. The Board affirms said improvement reclassification and recommended value of \$11,275.00.

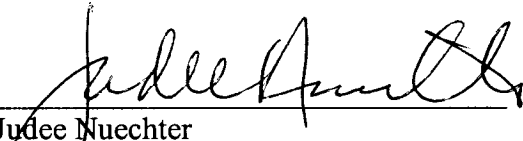
ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property sheds located on Schedule #R0030396 (Docket No. 39344) to the recommended value of \$11,275.00 and to reclassify all three parcels to an agricultural classification.

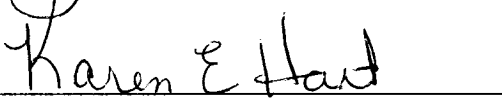
The Board retains jurisdiction in this matter until two weeks after the date of this order, by which time Respondent must notify the Board in writing as to the 2001 actual value of the subject properties based on an agricultural classification.

DATED and MAILED this 28th day of February, 2002.

BOARD OF ASSESSMENT APPEALS



Judge Nuechter



Karen E. Hart

This decision was put on the record

FEB 20 2002

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



Diane Von Dollen



<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DOMINICK AMARI,</p> <p>v.</p> <p>Respondent:</p> <p>PARK COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Dominick Amari Address: P.O. Box 50825 Nashville, TN 37205 Phone Number: (615) 604-7616 E-mail: Attorney Reg. No.:</p>	<p>Docket Numbers: 39344 & 39345</p>
<p>FINAL ORDER (On Retaining Jurisdiction)</p>	

THE BOARD OF ASSESSMENT APPEALS retained jurisdiction in this matter until two weeks from its February 21, 2002 Order, at which time the Respondent was to notify the Board in writing of the 2000 actual valuations of the subject properties based on an agricultural classification.

FINDINGS OF FACT:

1. On March 11, 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>
R0030396	\$12,382.00
R0043092	\$ 1,222.37
R0030405	\$ 1,118.00

ORDER:

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

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

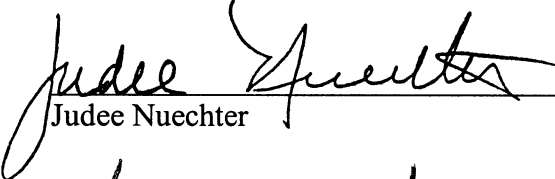
APPEAL:


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 14th day of March, 2002.

BOARD OF ASSESSMENT APPEALS

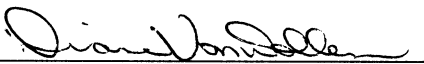

Judee Nuechter


Karen E. Hart

This decision was put on the record

MAR 13 2002

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


Diane Von Dollen

