

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SARA AND DAVID JOHN ALMOND,</p> <p>v.</p> <p>Respondent:</p> <p>SUMMIT COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: David A. Helmer, Esq. Address: P.O. Box 868 Frisco, Colorado 80443 Phone Number: (970) 668-0181 Attorney Reg. No.: 4189</p>	<p>Docket Numbers: 40766 & 40767</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 25, 2003, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by David Helmer, Esq. Respondent was represented by Frank Celico, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

1840 Elk Run Road, Summit County, Colorado and Tract containing 60 acres in Northeast quarter of Section 20, Township 3 South, Range 78 West of the 6th p.m.

(Summit County Schedule Nos. 1400168 and 6507007)

Petitioner is protesting the 2002 actual value and classification of the subject properties, a 40-acre improved tract of land and a 60-acre tract of vacant land.

ISSUES:

Petitioner:

Petitioner contends that the subject properties should be classified as agricultural. The two subject property parcels were originally part of a 1,200-acre tract. The subject properties were classified as agricultural until 1998, when the assessor reclassified the property to vacant land. Petitioner purchased the subject properties in 2000. Immediately after acquiring the property, they began the process of restoring it through conservation practices.

Respondent:

Respondent contends that the subject properties did not meet the requirements of the applicable statute for an agricultural classification for tax year 2002. There must be actual use for the two previous years and present use as a farm or ranch or it must be in the process of being restored through conservation practices. "Conservation practices" is specifically defined in the statute; it must be placed in a conservation reserve program or a conservation plan approved by the appropriate conservation district. The subject properties were not enrolled in a conservation plan and had no agriculture use during the years in question.

FINDINGS OF FACT:

1. Petitioner, Ms. Sara Almond, testified that they purchased the subject properties on April 19, 2000 and April 21, 2000. They were purchased to use as a ranch for cattle and horses. The zoning is agricultural. They thought the classification was agricultural as well.

2. Ms. Almond testified that they bought seed and raked between the sagebrush to restore the land for grazing. They contracted with Range West in the summer of 2000 to mark the property lines and stake the corners for easements and for fencing. At the time of purchase, the fencing was not complete on the entire property. They paid for the removal of the old fence and the installation of the new fence for both properties; the fencing started in 2000 and was completed in 2001. They brush cut the sagebrush so they could graze the property. Petitioner demolished the old barn on the property as it was in disrepair. Construction began on a caretaker house in May of 2001 and was finished in February of 2002. Petitioner and the caretakers built the loafing shed themselves. The caretakers live in the house in exchange for taking care of the horses and the property.

3. Ms. Almond testified that they run the "Reins of Change" program at their property. The caretaker's wife is a psychotherapist. All of the horses are specially trained therapy horses. Ms. Almond owns one horse and cares for another. Three individuals own the remaining horses and pay

board.

4. Ms. Almond testified that Mr. Mark Volt from the Natural Resources Conservation Service comes out once a year and inspects the property for use, plant vegetation, etc. They started to restore their property through conservation practices in the summer of 2000.

5. Under cross-examination, Ms. Almond testified that seven horses and a herd of steers were grazed on the subject property in 2002. The property was leased for steers, which belong to the T Bar D Cattle Company, which grazed the property twice, in the spring and again in the fall; they were gone by late November. In 2001, the horses were on the property, but there were no cattle.

6. Ms. Almond testified that there were no animals grazing on the property in 2000 because they had not completed the fencing and the restoration. They have been working with Mr. Mark Volt since the summer of 2000 towards a conservation plan.

7. Petitioner is requesting a 2002 actual value for the subject properties based on an agricultural land classification.

8. Respondent's witness, Mr. Michael Peterson, a Licensed Appraiser with the Summit County Assessor's Office, presented an indicated value of \$707,500.00 for the 40-acre subject property, and \$817,776.00 for the 60-acre subject property, based on the market approach.

9. Mr. Peterson testified that for tax year 2002, the property classification must be based on its actual use as of the assessment date, January 1, 2002. A house was constructed in 2001 on the 40-acre parcel, so the property was classified as residential for 2002. There were barns located on the 40-acre parcel and there were horses there in 2002. He did not see evidence of grazing on the 60-acre parcel. He did not inspect the property in 2001. According to assessor records, there was no actual agricultural use in 2000 or 2001.

10. Mr. Peterson testified that Petitioner submitted documents indicating that, in 2000 and 2001, they were preparing the property for agricultural use and were in the process of restoring the property. He contacted Mr. Mark Volt and asked if there was a formal conservation plan in place; he has not received any formal conservation plan to date. A formal conservation plan must be in place to qualify as agricultural land that is in the process of being restored.

11. Mr. Peterson testified that the agricultural use must be continuous. In 1993, the 40-acre parcel was sold and he has no written documentation that it was actually used for agricultural purposes from 1994 to 1996. His 1997 inspection did not show any use. In 1998, he asked for documentation and got a statement from Mr. Wellington, the previous lessee, that he did not use it in 1997 or 1998. It was sold in 1998 and he reclassified it in 1999 based on its non-use in 1997 and 1998. The property was still classified as vacant land in 2000. Petitioners purchased the subject property in April of 2000, and pulled building permits in 2001 for a house and barn. For 2002, the parcel was classified as residential as the house was essentially complete. The barn was erroneously omitted for 2002.

12. For the 60-acre parcel, Mr. Peterson testified that it was sold as a 100-acre parcel in 1984 and resold in 1993. From 1994 to 1997 it was grazed and leased. There was no actual

evidence of use in 1998. The property was reclassified as vacant land in 1999; it was still a 100-acre parcel. On April 19, 2000, Petitioner purchased 60 acres of the original 100-acre tract. There is a lot of sagebrush on the property. He conducted an on-site inspection in June of 2002 and observed the loafing sheds, but no evidence of grazing or droppings. There was no evidence of any water system or water tanks in 2002. On January 1, 2002, it was still vacant land; it was not grazed prior to 2002. The zoning is irrelevant; actual use is what is relevant.

13. Regarding the 40-acre improved parcel, Respondent's witness presented four comparable sales ranging in sales price from \$332,500.00 to \$650,000.00 and in size from 1,048 to 1,592 square feet. After adjustments were made, the sales ranged from \$599,288.00 to \$830,208.00.

14. Mr. Peterson testified that there were only two sales of improved properties on 40-acre sites, so he also used smaller land size residential sales and made adjustments for land size differences. He looked for the best comparables; there is not a lot of sales activity in the area.

15. Regarding the 60-acre vacant parcel, Respondent's witness presented three comparable sales ranging in sales price from \$500,000.00 to \$799,000.00 and in size from 40 acres to 60 acres. After adjustments were made, the sales ranged from \$620,303.00 to 817,777.00.

16. Mr. Peterson testified that the subject property sale was the best comparable and the 60-acre tract is shown as Sale #1. Comparable Sale #3 is the 40-acre subject tract.

17. Under cross-examination, Mr. Peterson testified that his 2002 inspection of the 40-acre tract showed grazing and there was no grazing on the 60-acre tract. He had previously inspected the property in 1997 and saw no evidence of grazing at that time. He has driven by the subject property every year since 1993. The actual use had not changed; there was no use. The parcels were never individually fenced prior to Petitioner's purchase. In 2000 and 2001, they were fencing the subject property. There had been no grazing on the property in 1997, 1998, or 1999. The subject properties were changed from agricultural in 1998 based on non-agricultural use and the previous owner did not submit any documentation or appeal the change in classification.

18. A physical inspection of the subject property was made on January 24, 2002 and the house was estimated at 95% complete as of January 1, 2002. He did not address the percentage completion issue for 2002.

19. Respondent assigned the following actual values to the subject properties for tax year 2002:

<u>Docket Number</u>	<u>Actual Value</u>
40766 (Improved 40-acre parcel)	\$707,500.00
40767 (Vacant 60-acre parcel)	\$817,776.00

20. Respondent is now recommending a reduction in actual value for Docket #40766 to \$692,138.00.

CONCLUSIONS:

1. Sufficient probative evidence and testimony was presented to prove that the subject properties were correctly classified, but incorrectly valued, for tax year 2002.

2. Regarding the agricultural classification issue, the Board was convinced that for years 1998 and 1999, the previous owners did not use the property as agricultural land. Respondent testified that the previous lessee verified the lack of use and Petitioner repeatedly admits in their exhibit that the prior owners “didn’t do anything on the property,” noting the dilapidated fencing and barn that existed on the property when it was purchased. Therefore, the continuous agricultural use was broken. The subject properties did not qualify for an agricultural classification and were correctly classified as vacant land on January 1, 2000.

3. Petitioners purchased the property, which was already classified as vacant land, in April of 2000 and began fencing, brush clearing, and grass reseeding of the subject properties in preparation for grazing activities. Petitioners admit no grazing activities occurred in 2000.

4. The Board heard testimony that the conservation district representative was involved in on-site inspections to improve the property, but such inspections do not constitute a conservation plan. There was no testimony or evidence from Mr. Volt confirming that a conservation plan exists and no conservation plan was submitted. The Board concludes that the subject property was not and is not enrolled in a Conservation Reserve Program or a conservation plan approved by the appropriate conservation district, and therefore does not meet the statutory requirement for agricultural classification.

5. The first qualifying year of agricultural activities would be 2001, based on actual grazing of the property. Continued agricultural use in 2002 and 2003 would make the property eligible for a change in classification in 2003, not in 2002, which is the year at issue in this appeal.

6. Regarding the valuation of the subject property under Docket #40766, Petitioner did not submit comparable sales, choosing to critique Respondent’s sales. The Board has reviewed Respondent’s sales and notes that two of the sales are of similar sized acreage as the subject, and the adjustments, although large, appear reasonable. The house must be valued as it existed on the assessment date, which is January 1, 2002, according to the level of value date of June 30, 2000. Respondent has admitted that the house was not fully finished as of the assessment date and has recommended a reduction to \$692,138.00, which the Board affirms.

7. Regarding the valuation of the subject property under Docket #40767, Petitioner did not submit comparable sales, choosing to critique Respondent’s sales. The Board has reviewed Respondent’s sales and notes that two of the sales are the subject properties. The Board extrapolated a size adjustment using the two subject sales, and determined that Respondent’s size adjustment was

too aggressive. The Board reduced the size adjustment to 10% and determined a price per acre range of \$9,305.00 to \$13,630.00. The Board recognizes that the subject properties are included in the sales comparison analysis, but also notes that they were purchased as an assemblage, which may have affected Petitioner's purchase price. The Board determined that the actual value of the subject property should come from the upper end of the range and that a price per acre of \$13,000.00 should be applied. The Board concluded to a subject property value for Docket #40767 of \$780,000.00.

ORDER:

For Docket #40766, Respondent is ordered to reduce the 2002 actual value of the subject property to \$692,138.00.

For Docket #40767, Respondent is ordered to reduce the 2002 actual value of the subject property to \$780,000.00.

The Summit 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 September, 2003.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Karen E. Hart

Karen E. Hart

This decision was put on the record

SEP 23 2003

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



Penny S. Lowenthal
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