

<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>THE PINEY VALLEY RANCHES TRUST,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>EAGLE COUNTY BOARD OF EQUALIZATION.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Kimberly E. Lord, Esq. Address: 2521 Broadway, Suite A Boulder, Colorado 80304 Phone Number: (303) 442-1900 E-mail: kelord@j-rlaw.com Attorney Reg. No.: 18802</p>	<p><b>Docket Number: 40795</b></p>
<p style="text-align: center;"><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on April 8, 2003, Steffen A. Brown and Karen E. Hart presiding. Petitioner was represented by Ms. Kimberly E. Lord, Esq. Respondent was represented by Mr. Bryan R. Treu, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**The Piney Valley Ranches Trust  
(37 Eagle County Schedule Numbers as set forth in Exhibit A)**

Petitioner is protesting the 2002 actual value of the subject properties, 37 parcels of vacant land located north of the Town of Wolcott in Eagle County, Colorado.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the 37 subject properties have been grazed with the consent of the previous owner. Petitioner is in the ranching business involving sheep, cattle grazing and haying. There is no issue that Petitioner is a ranching operation or that the subject parcels have been grazed since purchased in June of 2001. The only issue is whether there was consensual grazing in 2000.

### **Respondent:**

Respondent does not dispute that the Petitioner is a qualifying rancher and has likely grazed sheep on the subject properties. However, Respondent contends such grazing was due to trespass as there was no express permission given by the previous owner to graze the subject property. Trespass grazing does not qualify the subject for an agricultural classification. The subject parcels have been classified as vacant land since 1994.

## **FINDINGS OF FACT:**

1. The testimony of Mr. William Post, a co-trustee of the Trust, was incorporated from Docket 38418. The relevant findings of the incorporated testimony are as follows:

2. Petitioner's witness, Mr. William J. Post, co-trustee for Piney Valley Ranches Trust (PVRT), testified that he is one of two trustees for the Trust. PVRT has been in existence since 1990 and operates several ranches in Colorado and Utah. PVRT's operations include sheep, hay, and cattle, as well as subleases granted to others for cattle grazing. They run their operation on their own land and also have federal and state grazing permits.

3. The subject properties are part of what was known as the Waterford property. Mr. Post testified that the topography of the parcels under appeal is rolling hills with ravines and sagebrush. The Waterford property has been grazed by Petitioner's livestock since 1991.

4. Petitioner and GEICO Financial Services, Inc. executed a lease in 1991. Another lease was executed in 1993 with GEICO, Willow Creek Highlands Homeowners Association and Horse Mountain Homeowners Association. In 1991, PVRT started to look at acquiring various parcels of the original Waterford Ranch. At that time 1/3 was owned by GEICO, 1/3 by Morgan Merrill and 1/3 had been sold off previously to various owners. In 1992, PVRT purchased the 1/3 of the ranch owned by Morgan Merrill. In 1994, Horse Mountain LLC purchased the subject properties from GEICO.

5. Mr. Post testified that in 1998, Petitioner discussed a joint venture between Horse Mountain LLC and PVRT. The fact that PVRT would continue to graze the property while negotiations continued was discussed. In 1999, it was decided that PVRT would purchase the property rather than enter into a joint venture. Horse Mountain LLC did not object to the property

being grazed by PVRT. PVRT continued to graze all of the property owned by Horse Mountain LLC, as well as other parts of the original Waterford property that were owned by other parties.

6. Mr. Post testified that in July 2000, there was a meeting in which the terms and purchase price were agreed upon with Horse Mountain LLC. The contract was signed in January 2001. The property rights had previously been divided and the mineral rights and water rights had been severed from the surface rights. Petitioner wanted the entire property, and these rights had to be reassembled before the closing of the purchase contract. PVRT continued to graze the property. In June 2001 the property purchase contract was closed. In 1999, 2000, and 2001, there was consent to graze the properties under an oral agreement. The consideration for the grazing activity was in the continuing negotiations to purchase the property.

7. In cross-examination, Mr. Post testified that he did not dispute that the property had been classified as vacant land since 1994. Mr. Post admitted that the GEICO lease covered only years 1991 and 1992. The 1993 lease was a one-year lease only; Horse Mountain LLC and the Horse Mountain Homeowners Association were not related parties when the lease was executed. Grazing on the subject property occurs usually beginning in late April or the first of May through November of each year; the sheep are then shipped back to Utah. Mr. Post physically visits the subject properties two or three times a year. He has personally observed livestock on the subject properties during his visits.

8. In redirect, Mr. Post testified that there was no formal written grazing lease, as Petitioner was involved in purchasing the subject properties. Horse Mountain LLC took over the Horse Mountain Homeowners Association beginning in 1994 until June 2001, when the Petitioner purchased the subject properties. The Waterford property has never been platted and subdivided.

9. In re-cross, Mr. Post testified that negotiations for purchase occurred in 1999; he admitted that there was no formal written lease for year 1998.

10. Under questioning from the Board, Mr. Post testified that once negotiations were entered into to purchase the subject properties, no consideration was given to Horse Mountain LLC for grazing the subject properties.

11. Petitioner's witness, Mr. Magnus Lindholm, a beneficiary of the Piney Valley Ranches Trust (PVRT), testified that the trust was established to purchase the J Perry Ranch. He is generally involved in the trust operations, which is a sheep operation involving about 10,000 sheep and lambs. The trust has been grazing the subject properties since it was purchased. The trust also grazes other land, such as the Waterford and other properties, as well as having permits for grazing public land.

12. Sheep were raised on the property during GEICO's ownership and there was no change in the operation after GEICO sold the property. Petitioner was foreclosing on some notes for the other partial interest in the land owned by GEICO. PVRT entered into negotiations with Mr. Mitch Morgan of Horse Mountain LLC, the previous owner. Around 1998, PVRT discussed doing something together with Horse Mountain LLC as a joint venture. Horse Mountain LLC wanted to sell to PVRT, as they had not been able to sell much land. PVRT had permission to graze, according

to Mr. Bill Post, as there was going to be a lot of things to settle, and the taxes were very high on the land. A conceptual deal was made around the summer of 2000 and they ultimately agreed to purchase the property for \$6 million, which included water and mineral rights. Petitioner said that they wanted to continue to use the property and Mr. Morgan said that was no problem.

13. It took almost a year to close on the properties as it was a complicated transaction. The water and mineral rights were in separate ownership and there were tax implications. The closing finally occurred in March of 2001.

14. Petitioner has continued to graze the property subsequent to their purchase. They were grazing cattle as well as sheep. The Peterson property was continually grazed during the 1990's, until it was purchased. Originally there was an agreement between the Petersons and Mr. Perry Olsen for grazing, and they continued to use the agreement. There was a written agreement with the Petersons, which expired, but they continued to graze after the lease expired. There was no written agreement with Horse Mountain LLC. The only agreement to graze was with Mr. Morgan.

15. Under cross-examination, Mr. Lindholm testified that Mr. Bill Post was a trustee of PVRT and was more involved in the day-to-day business of the trust than he was. PVRT grazed over 100,000 acres. The ranch is 30,000 acres and there are permits for grazing Forest Service land. There are written permits with the BLM and the Forest Service. He has an oral agreement with Mr. Tom Howard, President of the Horse Mountain Homeowners Association, to graze their property; there is no written lease for the subject properties.

16. Mr. Lindholm testified that Mr. Mitch Morgan was not sure he could allow grazing as he had an agreement with the Homeowners Association. The covenants do not allow grazing of Horse Mountain. Mr. Lindholm assumes that is why there was no written lease on the property. In 1997, 1998, and 1999 the relationship with Mr. Morgan deteriorated as they were in litigation. He does not know if there was permission to graze prior to 1997, when there was discussion to enter a joint venture. In a 1998 or 1999 meeting in Connecticut, Mr. Morgan, a representative of Horse Mountain LLC, told him they could graze the subject properties. There was also a meeting in 2000 at the ranch, where Mr. Morgan told him they could graze. He understood that grazing with permission would allow an agricultural classification.

17. Under redirect, Mr. Lindholm testified that Mr. Howard is involved with the Horse Mountain Homeowners Association. There was a verbal agreement to graze his property as long as they stay off his lawn.

18. Petitioner is requesting a 2002 agricultural classification with the associated reduction in actual value for the subject property.

19. Respondent's witness, Mr. Mitch Morgan, testified that he is a member of Horse Mountain Ranch, LLC, along with two other parties. The LLC was formed to hold title to land purchased on July 27, 1994; they intended to resell residential lots. His first involvement with PVRT was due to the litigation. PVRT or a related entity was in the process of foreclosing on a mortgage from the estate of Morgan Merrill, which preceded the date of the covenants of the Homeowners Association. There was concern that through the foreclosure, the roadway easements

would be foreclosed out. Land Title, who had issued the title insurance, was concerned they would not have easements. There were settlement negotiations in March of 1997. He does not recall an agreement to graze the property as part of the settlement. Their relationship at that time was hostile.

20. Mr. Morgan testified that he does not recall if he knew the property was grazed when GEICO owned it. He recalls a hunting lease, not a grazing lease. He does not recall anyone asking him to continue the lease. It was the intent of Horse Mountain Ranch to sell the parcels of land as a residential development. They were in the process of installing the infrastructure and had no intentions of using the property for agricultural purposes. He was the person in charge of the LLC; the other members would not have had discussions regarding leasing the property. They never protested the classification as vacant land. They sold about twenty parcels as residential lots. He is aware of the agricultural classification preferential tax treatment.

21. Mr. Morgan testified that he was the President of the Homeowner's Association and their covenants preclude grazing. The property was sold to PVRT on June 18, 2001. He does not recall giving permission to graze the property. He has no recollection of discussions about grazing. He met with Mr. Lindholm about four times and with Mr. Post numerous times; he does not recall having any discussions about grazing. There are some fences on the subject properties, but there are no continuous boundary fences. PVRT livestock did graze the property from time to time, and when the livestock were on the property and when the homeowners complained, he would call PVRT and ask that the livestock be relocated; PVRT would then relocate them. PVRT never indicated that they thought they could graze the property. He has no recollection specifically with PVRT to graze the property; he recalls they were focused on real estate deals. He does not recall giving PVRT permission to graze the property in 2000.

22. Mr. Morgan testified that he is appearing in this hearing because he was going to be subpoenaed. The relationship with PVRT was checkered. Once the access issue was resolved, he felt they had a positive relationship.

23. Mr. Morgan testified that Respondent's Exhibit A is a letter from him to Mr. Treu. He wrote the letter to respond to PVRT's effort to reclassify the land.

24. Under cross-examination, Mr. Morgan testified that he would have had a concern about breaching his fiduciary responsibilities as a Homeowner Association officer if he would have given PVRT permission to graze.

25. Mr. Morgan testified that they purchased 63 parcels from GEICO. The intent was to resell the lots, although they might have kept a few for themselves. It was developed into lots in the 1980s. A vast majority of the lots had been sold and GEICO had the notes, on which they later foreclosed. GEICO was exploring trading their property to PVRT in exchange for other land PVRT owned. Sales had not gone as expected.

26. Mr. Morgan recalls meeting with Mr. Lindholm and Mr. Post at the Brown Palace in 1998 or 1999 regarding purchase of the property. He knew PVRT was intermittently grazing the property. From time to time, there were occasional situations where he contacted PVRT to move the animals off the property – sometimes the sheepherders had their trailers set on their property and he

would ask them to move the trailers. They were on friendly terms when discussing the sale of the property to PVRT, his focus was on selling the property. He has no recollection of any discussion with Mr. Post regarding grazing. He was an officer of the Homeowners Association while they owned the property. They did not feel the residential market would be in great enough demand in the next couple of years, so the sale was a good option.

27. Mr. Morgan testified that it was common knowledge that PVRT was grazing across the Hidden Valley. He told the Homeowners Association (HOA) that they would need to fence to keep the livestock out. There was no way to keep them from grazing due to the open range law. There would need to be specific permission from the HOA to erect a fence. He might have discussed with Mr. Post about having to move the animals from time to time, prior to the sale negotiations. The only communication about the grazing after negotiations might have been with the ranch manager to relocate the animals, but he does not recall any of those discussions.

28. In redirect, Mr. Morgan testified that he would have been violating the Homeowners Association's covenants if he had given permission to graze and he believes he would have remembered giving permission. The HOA's covenants were amended in 1984 and excluded grazing. From time to time, the HOA discussed fencing out the grazing, but they did not want to expend that amount of money to build a perimeter fence. He never gave permission to graze the property after the negotiations began in June of 2000.

29. Respondent's witness, Mr. Mark Chapin, a Certified General Appraiser and Deputy Assessor for the Eagle County Assessor's Office, testified that they changed the classification of the subject property to vacant land in 1995 due to no agricultural use of the property. Horse Mountain Ranch never asked for a change in classification and never said anyone was grazing the property. It is not complicated to get an agricultural classification. The tax is approximately \$87,000.00 as vacant land and approximately \$500.00 as agricultural land. There were grazing leases by GEICO with PVRT at \$10,000.00 annual rent. They never received a grazing lease between Horse Valley and PVRT. The value and classification were never challenged, so he never asked for a lease. Once the classification was challenged, he asked PVRT for a lease but they never gave him one. When PVRT asked for the classification change, there were discussions about what they would need and what the time frame was, including the statute qualifications. They have never received any documentation that there was permission to graze the property. They cannot give an agricultural classification without the owner's consent. He recommends that the property remain classified as vacant land.

30. In cross-examination, Mr. Chapin testified that he does not dispute that PVRT is a legitimate ranching operation. The livestock have crossed the property for a long time, as long as 12 years. During GEICO's ownership, it was classified as agriculture due to PVRT's grazing and the submitted documentation. When the subject properties were switched to a vacant land classification in 1995, it was because Horse Valley was developing the property. The classification change was based on the fact that the new owner was pursuing a different use than GEICO. There were livestock still grazing the property. The bulk of the subdivision is open and not fenced. He agrees that as of January 1, 2002, the subject parcels are used for agriculture purposes. The ownership was different on January 1, 2001. PVRT acquired the subject properties in June 2001.

31. Mr. Chapin testified that the real issue is whether there was permission given to graze the subject properties in 2000; he does not know if there was or was not grazing.

32. In redirect, Mr. Chapin testified that he does not know who owned the livestock that grazed the property. He has nothing showing permission was given.

33. Respondent assigned a vacant land classification to the subject properties for tax year 2002.

## **CONCLUSIONS:**

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified and valued for tax year 2002.

2. There is no dispute that livestock have been grazing the subject property for many years. There was a lease in place and the property was classified as agricultural before it was owned by Horse Mountain LLC. Subsequent to their purchase of the subject property from Horse Mountain LLC, Petitioner has grazed the property with qualifying livestock. The issue is whether the grazing that occurred during the year 2000 was by express permission of the owner.

3. The testimony is conflicting. Both Mr. Lindholm and Mr. Post of PVRT believe they had permission to graze the property. Mr. Morgan of Horse Mountain denies giving permission to graze the property. Mr. Morgan acknowledges that the livestock grazed the subject on occasion, but pointed out that Colorado is an open range state and they would have had to fence the livestock out to prevent grazing. The cost to construct a perimeter fence for this purpose was cost prohibitive. He also acknowledged that he would have been in breach of his fiduciary duties as an officer of the Horse Mountain Homeowners Association if he had given permission to graze the subject properties; the covenants specifically prohibit grazing.

4. There is no written lease, so the Board must weigh the testimony to determine if an oral lease was in place. We find no convincing evidence that there was an oral lease that allowed the livestock to graze by express permission during the ownership period of Horse Mountain LLC. The mere act of livestock grazing a property does not qualify a property for an agricultural classification; there must be permission of the property owner. Petitioner would have the Board believe that permission should be assumed, as they were not asked to stop grazing the property. However, the Board concludes that without express permission to graze the property, the grazing occurred by trespass. Respondent's Exhibit A, testified to by Mr. Morgan, corroborates his testimony that express permission was not given, contrary to Petitioner's claim. Trespass grazing does not qualify

the subject properties for an agricultural classification. (Besch v. Jefferson County Bd. of County Comm'rs, 20 P.3d 1195 (Colo. App. 2000).

**ORDER:**

The petition is denied.

**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 28<sup>th</sup> day of May, 2003.

**BOARD OF ASSESSMENT APPEALS**

Karen E Hart  
Karen E. Hart

Steffen A. Brown  
Steffen A. Brown

This decision was put on the record

**MAY 27 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



## THE PINEY VALLEY RANCHES TRUST

## 2002 Valuations

#	Schedule Number	Parcel Number	2002 Valuation	Current Classification
1	R006628	185508400134	155060	Vacant
2	R006748	185508100136	155060	Vacant
3	R006749	185508100137	155060	Vacant
4	R017857	185507100010	155060	Vacant
5	R017861	185507100009	155060	Vacant
6	R017872	185508200011	155060	Vacant
7	R017876	185517100026	155060	Vacant
8	R017878	185517100028	155060	Vacant
9	R017879	185517100029	155060	Vacant
10	R017882	185518100025	155060	Vacant
11	R017907	185507400034	155060	Vacant
12	R018043	185517200039	155060	Vacant
13	R018044	185518100041	155060	Vacant
14	R018047	185517200040	155060	Vacant
15	R018052	185518100046	155060	Vacant
16	R018217	185517300066	155060	Vacant
17	R018218	185517200065	155060	Vacant
18	R018223	185518400051	155060	Vacant
19	R018226	185520300052	155060	Vacant
20	R018238	185508300053	155060	Vacant
21	R018241	185517400055	155060	Vacant
22	R018242	185520100056	149080	Vacant

#	Schedule Number	Parcel Number	2002 Valuation	Current Classification
23	R018246	185520200059	155060	Vacant
24	R018357	185518400078	155060	Vacant
25	R018359	185521400080	155060	Vacant
26	R018361	185521400081	155060	Vacant
27	R018676	185520200095	155060	Vacant
28	R018841	185517400071	155060	Vacant
29	R018842	185517300072	155060	Vacant
30	R018843	185517300073	155060	Vacant
31	R018844	185520200074	155060	Vacant
32	R021139	185520400091	155060	Vacant
33	R026037	185509200114	155060	Vacant
34	R026093	185508200013	310130	Vacant
35	R032335	185530100128	22740	Vacant
36	R042414	185521100086	465190	Vacant
37	R042554	185509200115	620260	Vacant