

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>STEPHEN W. BARRY,</p> <p>v.</p> <p>Respondent:</p> <p>CLEAR CREEK COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Stephen W. Barry Address: 14014 North 73 Road Montrose, Colorado 81401 Phone Number: (970) 252-9021</p>	<p>Docket Number: 41243</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on August 27, 2003, Rebecca A. Hawkins and Judee Nuechter presiding. Petitioner appeared pro se. Respondent was represented by Robert W. Loeffler, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Clear Creek County Schedule Nos. R007491 and R007492

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2002. The subject property consists of two parcels. Both parcels have been classified and valued as vacant land, although they were used as agricultural land prior to 2002.

ISSUES:

Petitioner:

Petitioner contends that the two parcels did not have agricultural use in 2001 and 2002 due to the drought and based on a recommendation by the United States Department of Agriculture. Both parcels are currently zoned as agricultural land.

Respondent:

Respondent contends that the subject property has not had agricultural use since 2000. The petition form for this appeal is erroneous. The property classification changed to vacant land in 2002; therefore, this appeal involves an abatement for only tax year 2002. The Petitioner did not have an approved conservation plan or a ranch in 2002.

FINDINGS OF FACT:

1. Petitioner, Mr. Steven Barry, presented the appeal on his own behalf via telephone.
2. Based on the market approach, Petitioner is requesting a classification change from vacant land back to agricultural use for both parcels in 2002.
3. Mr. Barry testified that he believes all of the qualifications for agriculture were met. In 2001 and 2002, he did not run cattle on the properties due to a lack of water. The property was re-seeded and fertilized during that period based on recommendations from the Colorado State University Extension Service and the USDA. Petitioner also indicated that those same sources recommended that he not use the property for grazing during 2001 and 2002 due to the drought.
4. Mr. Barry testified that a district conservationist from the USDA provided him with a letter in 2003 recommending seeding and fertilization to prevent erosion. Proper grazing use is done through management of the land, with annual grass production and availability of pasture also considered. The letter also indicated that if spring moisture was exceptional in 2003, that limited grazing could be recommended. Mr. Barry testified that he has not had cattle on this property in 2003, but he is planning on placing cattle there within a couple of weeks.
5. The Petitioner testified that Clear Creek County did not have either a pasture management or an erosion prevention plan in place during the base period, although they are currently working on one.
6. During cross-examination, the Petitioner indicated that he did not have a contract from the USDA or CSU Extension Service during the base period. He took it upon himself to implement this program, and did not inform the Clear Creek County Assessor's Office of this plan.

7. Petitioner is requesting a 2002 actual value of \$200.00 for the subject properties and is requesting that the property be reclassified from vacant land to agricultural.

8. Respondent's witness, Diane Settle, the Clear Creek County Assessor, presented testimony supporting the classification change from agricultural to vacant land for the subject property.

9. Ms. Settle testified that the subject property consists of 2 parcels, which are located along the frontage road between Empire Junction and Georgetown Lake. Parcel 1 consists of 23.54 acres and Parcel 2 is 21.86 acres. Approximately one-third of the total property is pasture, and most of the land is mountainous. The Respondent did not see cattle on the property in 2001 or in 2002. The Petitioner did not provide Respondent with the CSU Extension Service contracts or the USDA contracts regarding a conservation program for the property during the appropriate base period.

10. Ms. Settle testified that, in the absence of a soil conservation district, a property owner would go through the CSU Extension Service in order to provide information to the Assessor regarding the utilization of a conservation program.

11. During rebuttal testimony, the Petitioner indicated that there had never been a soil conservation district in Clear Creek, and therefore, he did not feel a contract was available to give to the Assessor.

12. Respondent assigned an actual value of \$115,800.00 to Parcel 1 and \$112,850.00 to Parcel 2 for tax year 2002.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject properties were correctly valued for tax year 2002 and that the vacant land classification of the subject properties is correct.

2. The Board believes that the Petitioner was following recommendations by the USDA and CSU Extension Service to promote conservation practices on the subject property during 2002. The Petitioner admitted that he did not use the property for grazing purposes and had no livestock on the land during the base period. Statute 39-1-102(1.6)(a)(I) C.R.S. does state that if agricultural land is being restored through conservation practices and is to be valued as agricultural land, the owner must be able to establish the type of conservation program or plan being practiced and provide that documentation to the County Assessor.

3. According to testimony by both the Petitioner and the Respondent, Petitioner did not provide a conservation plan to the Assessor's Office. It is the taxpayer's responsibility to provide the documentation to the Assessor. Therefore, this Board cannot recognize that a formal conservation plan was in effect during the base period.

4. The Board was convinced that Respondent supported the 2002 classification change

from agricultural to vacant land for the subject properties.

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.

In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

DATED and MAILED this 30th day of August, 2003.

BOARD OF ASSESSMENT APPEALS

Rebecca Hawkins

Rebecca A. Hawkins

Judée Nuechter

Judée Nuechter

This decision was put on the record

AUG 29 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

