

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Petitioner:

DAVID G. MANNING,

v.

Respondent:

DOUGLAS COUNTY BOARD OF EQUALIZATION.

Attorney or Party Without Attorney for the Petitioner:

Docket Number: 42157

Name: David G. Manning
Address: 7765 S. Oneida Way
Centennial, Colorado 80112
Phone Number: (303) 771-6172

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on December 17, 2004, Karen E. Hart and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by Michelle Gombas, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Lot 7, Ranch at Coyote Ridge, Sedalia, Colorado
(Douglas County Schedule No. R0389277)**

The subject property is a vacant 35.08-acre site located in the Ranch at Coyote Ridge Subdivision.

ISSUES:

Petitioner:

Petitioner contends that the subject property's agricultural classification should be restored, as the site is fully fenced and available for livestock grazing.

Respondent:

Respondent contends that the subject property is correctly classified as vacant land and correctly valued.

FINDINGS OF FACT:

1. David G. Manning, Petitioner, presented the appeal on his own behalf.
2. Based on the restoration of an agricultural classification, Mr. Manning presented an indicated value of \$877.00 for the subject property.
3. Mr. Manning testified that he purchased the subject property in 1996 with the intent to build a residence and use the bulk of the site for livestock grazing. A residence has not yet been built.
4. Mr. Manning testified that the historical use of the land was for agricultural purposes. Randy Johnson, a tenant farmer, grazed livestock throughout the area before the land was subdivided and thereafter. No specific agreement existed between Mr. Manning and Mr. Johnson. A verbal agreement took effect with rancher Buck Morrow, who leases grazing rights on other parcels in the subdivision and who agreed to provide water and temporary fencing if necessary. A written lease was executed with Mr. Morrow in 2003 and is included in Petitioner's Exhibit A.
5. Mr. Manning testified that the grazing lease with Buck Morrow was not executed during tax years 2001 through 2003 due to drought conditions. Mr. Manning has continued to tend the land for future grazing by mowing, controlling weeds, and installing fencing. He testified that a county agent walked the land and suggested chemicals for weed control. Petitioner's Exhibit A includes a document from the Douglas County Government Public Works/Operations Division suggesting chemicals for weed control and receipts for weed control. Mr. Manning does not have a soil conservation plan.
6. Mr. Manning testified that the agricultural classification should be restored, that the existing grazing lease meets the spirit of the law, and that he is maintaining the land for grazing purposes in the event the drought lifts.

7. Respondent's witness, Larry Shouse, a Certified General Appraiser with the Douglas County Assessor's Office, presented an indicated value of \$280,000.00 for the subject property based on a vacant land classification and the market approach.

8. As indicated in Respondent's Exhibit 1, Mr. Shouse presented four land sales ranging in price from \$195,000.00 to \$313,900.00, and in size from 34.962 acres to 35.540 acres. After adjustments were made, the sales ranged from \$219,813.00 to \$313,900.00.

9. Mr. Shouse testified that the vacant land classification was based on an October 16, 2002 inspection in which no crops, grazing, or fencing were observed, and on an Agricultural Land Classification Questionnaire completed by Petitioner on December 19, 2002, which reported no livestock or grazing, and stated that the "land is available for lease".

10. Mr. Shouse testified that the Petitioner's grazing lease with Buck Morrow is dated July 23, 2003, and that state statute requires agricultural use for the 2003 tax year as well as the two years prior to the 2003 tax year, criteria not met by Petitioner.

11. Mr. Shouse testified that weed control and fencing, which was not in place during the base period, do not satisfy the criteria for agricultural classification. Douglas County has weed control regulations that must be met, regardless of the classification or use of a property.

12. Respondent classified the subject property as vacant land and assigned an actual value of \$270,000.00 for tax year 2003.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that vacant land classification for tax year 2003 was correct and that the subject property was correctly valued.

2. The Board recognizes that the subject property had verbal and written leases in place during the appropriate time period, however the Board was not persuaded that the subject property was actually used for grazing in tax years 2001 through 2003. Petitioner testified that he **intended** to use the land for grazing purposes. As stated in the Supreme Court's decision in *Douglas County Board of Equalization v. Edith Clarke and The Board of Assessment Appeals (95SC45)*, "We find no indication in the statutory text . . . to indicate that the legislature intended to broaden the meaning of the phrase "use for grazing" to include parcels that the taxpayer intended to use for grazing, but did not. The taxpayer's subjective intent to use the land is not relevant for ad valorem tax classification purposes." Without actual grazing activity during each tax year, the subject property cannot qualify for an agricultural classification.

3. Furthermore, the subject property cannot qualify for an agricultural classification as land under restoration. Although Petitioner attempted to preserve the land for future grazing through weed control, he did not present a government approved soil conservation plan.

4. Based on all of the evidence and testimony presented, the Board affirms Respondent's vacant land classification and assigned value for tax year 2003.

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.

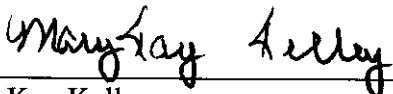
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 19th day of January 2005.

BOARD OF ASSESSMENT APPEALS



Karen E. Hart

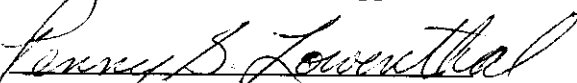


MaryKay Kelley

This decision was put on the record

JAN 19 2005

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



Penny S. Lowenthal

