

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
<hr/> Petitioner: RONOLD L. VON HAGEN, v. Respondent: SAN MIGUEL COUNTY BOARD OF EQUALIZATION.	
Attorney or Party Without Attorney for the Petitioner: Name: Andrew A. Mueller, Esq. Address: 645 2 nd Street P.O. Box 646 Ouray, Colorado 81427 Phone Number: (970) 325-4414 E-mail: ouraylaw@starband.net Attorney Reg. No.: 26326	Docket Number: 42267
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on April 19, 2004, Judge Nuechter and Steffen A. Brown presiding. Petitioner was represented by Andrew A. Mueller, Esq. Respondent was represented by Kevin J. Geiger, Esq.

1. The parties to this appeal are in dispute as to whether the subject property qualifies as agricultural land under C.R.S §39-1-102 and applicable Colorado case law. The parties seek a determination regarding the proper classification of the 139.43-acre parcel identified as San Miguel County Schedule No. R1041239305.

2. Mr. Mueller, counsel for Petitioner, argued that the land qualifies as agricultural land under C.R.S. §39-1-102(1.6)(a)(IV). Respondent contends that the subject property is correctly classified as vacant land.

3. The Board conducted an evidentiary hearing and heard oral argument. The parties stipulated to Joint Exhibit 1, and all exhibits were admitted into evidence.

4. The subject property consists of 139.43 acres located on Specie Mesa in San Miguel County, Colorado. The property was purchased in 1986. From that time through 1999, the property was classified agricultural for ad valorem purposes. In 2000, the classification was changed to vacant land and Petitioner did not challenge the reclassification. Petitioner has a decreed right to appropriated water from the Williams Ditch for the specific purpose of irrigation. For that reason, Mr. Mueller argued that the subject parcel does not need to fulfill the requirement under C.R.S. §39-1-102(1.6)(a)I.

5. Mr. Mueller directed the Board's attention to Petitioner's Exhibit H and Exhibit I, grazing leases between Petitioner and Mr. Fred Blackburn and Mr. Jan Klecker for the periods April 1, 2001 through March 31, 2002 and January 28, 2002 through January 27, 2003, respectively. Water was used in 2002 to irrigate the pasture to produce feed for cattle and/or sheep.

6. Mr. Mueller argued that the valid water rights are being used for the production of livestock products on the subject parcel and that the water is being used to grow the pasture grass. Mr. Mueller argued that Colorado case law holds that the lessees' use of the property for making a profit is the determinative factor and therefore, the landowner does not need to profit or intend to profit, citing *Boulder County Board of Equalization v. M.D.C. Construction Company* and *Besch v. Jefferson County Board of County Commissioners*. Mr. Mueller argued that statutes do not specify a specific time or the number of days livestock must graze the land or that the livestock need to eat a specific amount. He cited *Douglas County Board of Equalization v. Clark, et al.*, and argued that the statutes are "silent" in this regard. The intent of the lessee is the issue; the landowner does not need to profit or intend to profit.

7. Mr. Geiger stated that the subject property was classified as agricultural until 1999. It was reclassified as vacant land in 2000 when the Assessor determined that there was a lack of grazing or other qualifying uses on the property; there was no evidence of any agricultural use during years 1999 and 2000. No protest was filed until 2003. There is no argument regarding Petitioner's decreed water rights, the dates water was applied to the property, or to the fact that leases existed. Mr. Geiger stated that during oral arguments, council for Petitioner admitted that they cannot meet the statutory requirements of a farm and are therefore asserting that the land is a ranch as defined under C.R.S. §39-1-102(13.5). Mr. Geiger argued that grazing has been sporadic and limited, that there are no salt licks or water tanks, and that fencing is limited. Further, there is no indication that the water applied to the property was used for the production of livestock products.

8. Citing *Douglas County Board of Equalization v. Clark, et al.*, *Boulder County Board of Equalization v. M.D.C. Construction Company* and *Farny v. Board of Equalization of Dolores County*, Mr. Geiger argued that grazing leases are not determinative of use or classification and the primary factor is the actual use of the property. Mr. Geiger questioned whether the property is a legitimate and bona fide functioning ranch or farm and asserted that the *M.D.C.* case indicates the inquiry is more demanding as to the primary purpose of obtaining a monetary profit.

9. Mr. Geiger argued that Petitioner crossed the line by bringing four or five animals on the property once a year for a period of 24 to 48 hours, in one case from a distance of more than 200 miles, and it is merely a “sham” or an example of “show grazing” in order to obtain agricultural status.

10. Mr. Geiger referred to *C.A. Staack Partnership v. Board of County Commissioners* quoting, “If the use of the land is other than grazing livestock for the primary purpose of obtaining a profit, then the land cannot be classified as “agricultural land” used as a “ranch.”

11. Mr. Geiger referenced the Assessor’s Reference Library, which instructs the Assessor to examine a number of items for taxpayers claiming agricultural classification. Some of the items referred to are: IRS Form 1040F, receipts for services or items purchased relevant to the agricultural operation, brand inspection certificates, enrollment documents from Federal Agricultural programs and sales invoices. The Petitioner did not provide any of this information. Mr. Geiger also referred to the Colorado Constitution, Article X, Section 3 and C.R.S. §39-1-102(1.6)(a)(IV) concerning water and argued that the water shall be used to grow grass or forage. The water was applied on the same dates that the animals were grazing; therefore, the water could not possibly have contributed to the growth of the grass or forage upon which the livestock fed.

CONCLUSIONS:

1. Respondent presented sufficient evidence and testimony to prove that the subject property was correctly valued and classified for tax year 2003.

2. Petitioner contends that the subject property qualifies as agricultural pursuant to C.R.S. §39-1-102(1.6)(a)(IV):

“A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, if the owner of the land has a decreed right to appropriated water granted in accordance with article 92 of title 37, C.R.S., or a final permit to appropriated ground water granted in accordance with article 90 of title 37, C.R.S., for purposes other than residential purposes, and water appropriated under such right or permit shall be and is used for the production of agricultural or livestock products on such land;”

3. Although the owner of the subject property does have a decreed right to appropriated water, the Board was not persuaded that the subject property qualifies as a ranch as defined in C.R.S. §39-1-102(13.5): “Ranch” means a parcel of land which is used for grazing livestock for the **primary purpose of obtaining a monetary profit** (emphasis added). Based on the evidence and testimony presented, the Board was convinced that Petitioner allowed short-term and minimal grazing on the property **for the primary purpose of obtaining favorable agricultural tax treatment.**

4. The lessee in this case does not appear to use the subject property for the primary purpose of obtaining a monetary profit. According to Joint Exhibit 1, the property had the following agricultural activities:

September 21, 2001	irrigation of grass
September 21, 22, and 23, 2001	five cattle grazing
May 29, 30, and 31, 2002	irrigation of grass
October 29 and 30, 2002	five sheep grazing
September 27, 2003	irrigation of grass
September 27 and 28, 2003	four or five sheep grazing

5. Although there was minimal activity, the Board cannot conceive of any circumstance that a legitimate attempt to obtain a monetary profit would include the grazing of a property by five cattle for three days a year or four to five sheep for a period of two days a year, especially when the sheep were transported from over 200 miles away. The Board finds it significant that Petitioner had to notify the Assessor of the two days in 2003 when sheep would be on the property so that the Assessor could conduct an inspection. There was no evidence to explain why there was such negligible use of the property, other than a disputed statement by Mr. Getts that the sheep were brought to the property to help the property owner get agricultural status. According to the evidence, the land is capable of maintaining far more animals for a greater period of time than the actual use of the property. There was also a lack of evidence regarding the lessee's other agricultural activities in order to determine whether the use of the subject property was part of a larger agricultural operation. The Board was not convinced that the subject property was grazed for the primary purpose of obtaining a monetary profit.

6. The Board was not convinced that the water rights were utilized for the production of agricultural or livestock products on the subject land; it is doubtful that a significant portion of the property could be irrigated in one to three days of flooding a year or that such minimal irrigation would noticeably enhance the growth of the grass. In fact, the 2001 and 2003 irrigation occurred on the same day the livestock were present. The Assessor's staff did not notice any sign of irrigation on the property during their inspections, which should have been noticeable as areas that receive irrigation water typically show more growth than non-irrigated areas.

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.

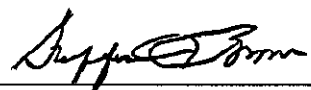
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 25th day of January 2005.

BOARD OF ASSESSMENT APPEALS



Judge Nuechter



Steffen A. Brown

This decision was put on the record

JAN 25 2005

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



Penny S. Lowenthal

