

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>DWIGHT L. ZEMP & JOHN W. CLINGMAN,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioners:</p> <p>Name: Dwight L. Zemp Address: 220 Malibu Street Castle Rock, Colorado 80109 Phone Number: (303) 660-9211 x11</p>	<p>Docket Number: 42285</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 5, 2004, Debra A. Baumbach and Diane M. DeVries presiding. Petitioners were represented by Dwight L. Zemp, pro se. Respondent was represented by Michelle B. Gombas, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Vacant land, 105.66 acres
(Douglas County Schedule No. R0441697)**

Petitioners are protesting the 2003 actual value of the subject property, a 105.66-acre vacant land parcel located near Castle Rock, Colorado.

ISSUES:

Petitioners:

Petitioners contend that the subject property is part of a larger agricultural parcel, the Scott Land Parcel, located north of Castle Rock between Santa Fe and D & RG Western Railroad. The Respondent reclassified the subject property from agriculture to vacant land for tax year 2003.

Respondent:

Respondent contends that the subject property should not be classified as agriculture. The market approach is the proper approach to value the subject property.

FINDINGS OF FACT:

1. Dwight L. Zemp, Petitioner, presented the appeal on behalf of the Petitioners.
2. Mr. Zemp indicated that he did not submit any written evidence as a part of this hearing. He did respond to the Douglas County Assessor's office request for information in 2001, 2002, and 2003. His records are not available since he is involved in a divorce proceeding.
3. Mr. Zemp testified that the land use of the subject property has not changed from its historical agricultural use. The subject property is not separately fenced and remains part of the larger 320-acre parcel which includes the Scott property. The perimeter of the entire 320 acres is fenced. The entire property is used for livestock and haying operations. There is no written lease with the Scott family; there is only a verbal understanding.
4. Mr. Zemp testified that it is his understanding that no development would be allowed on the majority of the subject property and that the property is restricted to grazing. According to Mr. Zemp, Douglas County maps show that the subject property is within the designated Prebble Jumping Mouse area, which has a negative impact on the majority of the subject property. There is about 20-25 acres of the subject property that is not part of the designated Prebble Jumping Mouse area.
5. Mr. Zemp testified that Plum Creek is the water source for the subject property, which runs through the middle of the subject property.
6. Mr. Zemp testified that the primary use of the subject property is for the horses and brood mares designated to produce a foal. There is no livestock to sell for four years when you are raising registered horses.
7. Mr. Zemp believes that since the subject property has not changed use from the time the Petitioners purchased the property in 2000, the agricultural use should continue.

8. Petitioners are requesting an agricultural classification for 2003.
9. Respondent's witness, Mike Shafer, Certified Residential Appraiser with the Douglas County Assessor's Office, presented an indicated value of \$454,338.00.00 for the subject property, based on the market approach.
10. Mr. Shafer testified that he believes that there was a change in the use of the property. The documentation that was provided by the Petitioners does not provide evidence of agriculture use. Schedule F showed expenses but no income; there were expenses for registry for Arabian horses and truck repair. There were no stud fee expenses. In his opinion, due to the lack of proper documentation, he believes that the horses were pleasure horses and not breeding stock.
11. Respondent's witness presented four comparable sales ranging in sales price from \$4,555.00 to \$5,714.00 per acre and in size from 70 to 322 acres. After adjustments for time, railroad and topography, the sales ranged from \$3,644.00 to \$4,571.00 per acre. The subject property was valued at \$4,300.00 per acre for a total value of \$454,338.00.
12. Mr. Shafer testified that the Petitioners purchased the subject property in July 2000 for \$425,000.00.
13. Under cross-examination, Mr. Schafer explained Respondent's Exhibit 1, which included copies of checks and receipts from the Petitioners. Check number 2286 dated July 7, 2003 to LTC, Laughlin Training Center, in the amount of \$1,600.00 was for stud fees for three mares.
14. Mr. Shafer testified that the check for stud fees would have been the first step to changing the classification from vacant land to agriculture. Breeding for profit is evidence of agricultural classification.
15. Mr. Shafer testified that he did not make adjustments for access. The lowest per-acre value assigned to land in Douglas County is \$4,300.00.
16. Respondent assigned an actual value of \$496,602.00 to the subject property for tax year 2003. The Respondent is recommending a reduction for tax year 2003 to \$454,338.00.

CONCLUSIONS:

1. Sufficient probative evidence and testimony was presented to prove that the subject property was incorrectly valued for tax year 2003.
2. The Petitioners did not provide any written documentation to the Board with specific evidence of agriculture use. The Petitioners attempted to use copies of receipts that had been submitted to the Respondent which appear to have occurred in 2003. These copies are illegible. The Board does not doubt that agriculture pursuits are in the making; however, the Petitioners need to provide documentation of stud services provided to the three mares. Specific dates and results would have been helpful.

3. The Petitioners should work with the Scotts to formalize leases of the subject property. It is evident that the entire parcel, including the Scott parcel and the subject property, is fenced as one. This implies that grazing is permitted; however, trespass grazing does not qualify for agricultural use.

4. Colorado Revised Statutes require that agriculture usage must occur during each of the two years prior to, as well as the current year, before granting an agriculture classification. The Petitioners purchased the subject property in July 2000 and it does appear that they have been making headway in agricultural pursuits. However, no documentation was presented to the Board for 2001 and 2002 that support actual agriculture usage for those years. The receipts submitted in Respondent's Exhibit 1 appear to have occurred in 2003, which, absent further documentation related to earlier years, would appear to be the first qualifying year of the three-year requirement. The Board determined that the subject property does not meet the definition of agriculture land due to lack of qualified use during 2001 and 2002.

5. The Respondent was unable to verify whether the subject property was located within the Prebble Jumping Mouse designated area. The Petitioners failed to provide the Board with proof that the subject property is in fact in the designated area. Without such evidence, the Board cannot determine whether a further reduction in Respondent's market value conclusion is necessary based on Prebble Jumping Mouse presence.

6. The Board determined that the Respondent properly valued the subject property in Respondent's Exhibit 1 for tax year 2003 by using the market approach to value. The Board accepts the Respondent's appraised value of \$454,338.00.

ORDER:

Respondent is ordered to reduce the actual value of the subject property to \$454,338.00.

The Douglas County Assessor is ordered to change her value 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 8th day of December, 2004.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

Diane M. DeVries
Diane M. DeVries

This decision was put on the record

12/7/2004

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

Diane M. Fechisin
Diane M. Fechisin

