

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>NANCY HANEY</p> <p>v.</p> <p>Respondent:</p> <p>SAGUACHE COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket Number: 44671</p>
<p>ORDER (On Retaining Jurisdiction)</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 21, 2006. The Board requires additional information from Respondent prior to rendering a decision in this matter.

ORDER:

On or before May 3, 2006, the Respondent is ordered to provide the Board with the following:

1. Copies of the original abatement petitions filed for each year at issue.
2. The final determination of the County Board of Commissioners for each abatement petition filed for each year at issue, including the final actual value assigned to the subject property for each year at issue.
3. Documentation of any refunds paid to Petitioner as a result of abatement petitions that were approved for each year at issue.
4. Documentation substantiating when the subject property was reclassified to agricultural and the value assigned to the property at that time.

DATED and MAILED this 19th day of April 2006

BOARD OF ASSESSMENT APPEALS

MaryKay Kelley

MaryKay Kelley

Karen E Hart

Karen E. Hart

This decision was put on the record

APR 18 2006

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



<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>NANCY HANEY,</p> <p>v.</p> <p>Respondent:</p> <p>SAGUACHE COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 44671</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 21, 2006 MaryKay Kelley and Karen E. Hart presiding. Petitioner appeared pro se. Respondent was represented by Benjamin Gibbons, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1997 through 2004.

PROPERTY DESCRIPTION:

Subject property is described as follows:

N1/2NE1/4 12-45-8
Saguache County Schedule No. 433712100023-R

The subject property consists of an 80-acre tract of land with no structures or utility services.

FINDINGS OF FACT:

1. Petitioner purchased the subject property in 1996. The subject property was previously a part of the Werner ranch and is bordered by the ranch on three sides; it is not separately fenced. Mr. John Werner leases the subject property for cattle grazing and access purposes to water his cattle at a natural spring on the bordering BLM land.

2. The Saguache County Assessor reclassified the subject property from agricultural to vacant land in 1997.

3. Petitioner testified that she submitted grazing leases and agricultural questionnaires to the Saguache County Assessor. Ms. Haney also discussed the reclassification with the Saguache County Assessor on numerous occasions through phone calls, in-person inquires, and in written form. It cannot be determined if Petitioner's appeals and discussions with the Saguache County Assessor occurred during the statutory appeal period. Petitioner's Exhibit A indicates 68 phone calls made to the Assessor from September 2002 through September 2004, but only one call occurred during the appeal period.

4. After years of lack of responses from Saguache County officials, Ms. Haney contacted the Colorado Division of Property Taxation (DPT) and filed two abatement petitions, one in December 2004 and one in January 2005.

5. As shown in Petitioner's Exhibit H, the DPT staff also contacted the Saguache County Assessor regarding Ms. Haney's appeals. The DPT staff left many messages over several months but the only response received was an email regarding the scheduling of a hearing date of April 19, 2005 for Petitioner's abatement petitions. Petitioner did not receive a notice of the hearing from the Saguache County Commissioners and no hearing was held on April 19, 2005. According to documents ordered by the Board of Assessment Appeals (BAA), Respondent did hold a hearing on May 17, 2005 for Petitioner's abatement request regarding tax years 2002, 2003, and 2004. Respondent did not concur with the Assessor's recommendation and denied Petitioner's abatement request.

6. Although the BAA ordered Respondent to submit documents regarding its actions on each abatement petition, no documents pertaining to Petitioner's abatement petition for tax years 1997 through 2001 were submitted.

7. The Saguache County Assessor reclassified the subject property to agricultural via a Special Notice of Valuation dated September 18, 2003. The Assessor's records indicate that the subject property has been classified as agricultural for tax years 2003 and 2004.

8. Petitioner is requesting a refund of tax monies paid for tax years 1997 through 2004 due to the change in classification from agricultural to vacant land.

9. Respondent did not present any witnesses in this matter. Respondent believes that tax years 2002, 2003, and 2004 are the only years that can be appealed pursuant to C.R.S. 39-10-114.

10. Respondent did not present any evidence regarding the 2002 assigned value of the subject property. However, the Assessor's records ordered by the BAA indicate a value of \$60,000.00, which corresponds with Petitioner's documentation. Respondent assigned an actual value of \$448.00 to the subject property for tax years 2003 and 2004.

CONCLUSIONS OF LAW:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified and valued for tax year 2002. Respondent's records indicate that the subject property did have an agricultural land classification for tax years 2003 and 2004. Therefore, Petitioner's request for refund for tax years 2003 and 2004 is denied.

2. The Board is convinced that the subject property qualified for agricultural classification for each year under appeal, and that the Saguache County Assessor improperly classified the subject property as vacant land starting in 1997.

3. Ms. Haney believes that she may receive refunds for an extended period beyond that allowed in C.R.S. 39-10-114 due to the lack of response from Saguache County officials. We disagree. Ms. Haney did not exhaust all of her legal remedies before seeking relief from the BAA.

4. A taxpayer has the opportunity to file an appeal with the County Assessor during the statutory appeal period each year, generally the month of May for most Colorado counties. If the Assessor does not respond, taxpayer's next step is to appeal to the County Board of Equalization. If the County Board of Equalization does not respond, Petitioner can appeal to the Board of Assessment Appeals.

5. In the alternative, Petitioner may file abatement petitions for those years in which an appeal is not filed. However, those petitions must be timely filed. No evidence was presented to indicate that Ms. Haney followed these statutory procedures prior to filing the abatement petitions dated December 2004 and January 2005. C.R.S. 39-10-114 clearly states "*Except as provided in sub-subparagraphs (E) and (F) of this subparagraph (I), in no case shall an abatement or refund of taxes be made unless a petition for abatement or refund is filed within two years after January 1 of the year following the year in which the taxes were levied.*" Petitioner does not meet the exception criteria. Petitioner's abatement petitions for tax years 1997 through 2001 were not timely filed and the BAA has no jurisdiction regarding these tax years.

6. Ms. Haney believes the Assessor's lack of response to her appeals and inquiries is an act of negligence, malfeasance of office, misconduct, dereliction of duties, and criminal. The Board has no jurisdiction in prosecutorial matters related to an Assessor's failure to perform statutory duties.

ORDER:

The abatement/refund requested for tax years 1997 through 2001 is dismissed.

The abatement/refund requested for tax years 2003 and 2004 is denied.

Respondent is ordered to change the classification of the subject property to agricultural for tax year 2002 and to cause an abatement/refund to Petitioner based on an actual value for the subject property of \$448.00.

The Saguache County Assessor is directed to change her records accordingly.

The Saguache County Assessor is directed to change her records accordingly.

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 1st day of June 2006.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

MaryKay Kelley

MaryKay Kelley

This decision was put on the record

JUN 01 2006

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

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