

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DURANGO MOUNTAIN LAND COMPANY LLC,</p> <p>v.</p> <p>Respondent:</p> <p>SAN JUAN COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket Number: 44908</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 23, 2006, Judge Nuechter and Karen E. Hart presiding. The Board received Respondent's written closing argument on April 20, 2006 and Petitioner's closing brief on April 24, 2006. Petitioner was represented by Robert Duke Eggleston, Esq. Respondent was represented by Paul Sunderland, Esq. Petitioner is protesting the 2005 classification of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**165 Acres Less 12 Acres Highway Easement
Highway 550 North, Durango, Colorado
San Juan County Schedule No. 5089134000001-R**

FINDINGS OF FACT:

1. At issue is the classification of 153 acres (165 acres less 12-acre highway easement) of land. Of the 153 acres, 117 acres are forested. Respondent classified the subject property as vacant land. Petitioner asserts that the subject property should be classified as forest land. There is no dispute that the subject property will be developed at some point; however, no infrastructure is in place and no start date for development has been established.

2. The parties stipulated to a value of \$4,590,000 if the property is determined to be vacant land rather than forest land.

3. The previous owner of the subject property entered into a 10-year Forest Stewardship Plan on September 1, 2001. Petitioner acquired the subject property on October 25, 2002. The forest management plan was not transferred into the current owner's name. Petitioner diverged from the activities set forth in the plan for 2002, 2003, and 2004, and did not amend the plan to reflect the activities that were accomplished in each year. However, all three years of planned activities were completed in 2004.

4. Petitioner intends to keep as many trees as possible on the subject property and does not intend to harvest a significant number of trees. Petitioner gave the wood that was removed from the subject property to the logger, and has not received any form of payment for the wood.

5. The plan states that the long-term prescription is to reenter the spruce-fir and aspen stands in 10 to 20 years and remove more trees selectively or with small clearcuts to maintain the diversity of size and age of the trees and maintain a healthy forest condition. The subject's forest plan only contained activities that were to occur in the first three years of the 10-year plan. The plan does not contain formal annual forestry activity requirements for the remaining seven-year term of the plan. It appears that the forestry activities required by the 10-year plan are complete.

6. Colorado State Forest Service Forester, Mr. Daniel F. Wand, is responsible for inspecting the subject property and insuring that the annual activities are accomplished. Mr. Wand was aware that the annual forestry activities required by the plan had not been completed as scheduled and that the plan had not been amended to reflect the change in ownership or activities. He recommended that the San Juan County Assessor classify the subject property as forest land despite these deficiencies. Mr. Wand admitted to changing and/or adding notations to the subject property's annual work plan after the official records were sent to Respondent.

7. San Juan County Assessor, Judy Zimmerman, received Mr. Wand's recommendation for a forest land classification each year. Ms. Zimmerman had reason to question the recommendations as she had previously received forest land classification recommendations from Mr. Wand for properties that did not meet the statutory requirements for forest land classification. She questioned the recommendation for the subject property in 2005 and obtained additional information. She determined that Mr. Wand's forest land recommendation was not valid and changed the property classification to vacant land. The change in classification to vacant land was based in part on the following:

- a. Logging is not a legal use of the subject property.
- b. Petitioner derived no income from the logging activities that did occur.
- c. The plan does not require any annual forestry activities beyond 2004.
- d. The Forestry Service did not conduct an annual inspection in 2003.
- e. Petitioner is not the owner named in the plan.
- f. Petitioner did not follow the management plan.
- g. Petitioner has not shown any plan to profit from logging activities in the future.

8. Although testimony indicates that the subject property had been used for grazing purposes, Petitioner had no grazing lease in place and had received no compensation related to grazing activities. In any event, the subject property cannot qualify for an agricultural classification under the forest land statute if it qualifies for an agricultural classification under the farm or ranch statute. Insufficient data was submitted to substantiate that the subject property was used for grazing over the required time period, and Petitioner was never compensated for any grazing that may have occurred. The subject property does not meet the requirements of an agricultural classification based on the statutory definition of a farm or ranch.

9. Petitioner is requesting a forest land classification for the subject property for tax year 2005.

10. Respondent classified the subject property as vacant land and assigned an actual value of \$4,590,000 to the subject property for tax year 2005.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified and valued for tax year 2005.

2. The Assessor is charged with classifying property for assessment purposes. The Forest Service may make recommendations as to forest land classifications, but does not have the authority to classify property for assessment purposes. If the Assessor has evidence that the property does not meet the statutory requirements for forest land, he/she is bound by law to classify the property accordingly. Based on the evidence and testimony presented, the change in classification from forest land to vacant land was warranted.

3. The definition of agricultural land pursuant to C.R.S. 39-1-102 (1.6)(a)(II) is "A parcel of land that consists of at least forty acres, that is forest land, that is used to produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, that is subject to a forest management plan, and that is not a farm or ranch, as defined in subsections (3.5) and (13.5) of this section. "Agricultural land" under this subparagraph (II) includes land underlying any residential improvement located on such agricultural land."

4. The subject property is not producing tangible wood products for the primary purpose of obtaining a monetary profit. Petitioner did not receive monetary compensation for the logging activities. Additionally, Petitioner's witness, Mr. Hards, admitted that Petitioner planned to remove as few trees as possible, and in fact, County regulations prohibited the removal of many trees.

5. "Forest management plan" means an agreement which includes a plan to aid the owner of forest land in increasing the health, vigor, and beauty of such forest land through use of forest management practices and which has been either executed between the owner of forest land and the Colorado state forest service or executed between the owner of forest land and a professional forester and has been reviewed and has received a favorable recommendation from the Colorado state forest service. The Colorado forest service shall annually inspect each parcel of land subject to

a forest management plan to determine if the terms and conditions of such plan are being complied with and shall report by March 1 of each year to the assessor in each affected county the legal descriptions of the properties and the names of their owners that are eligible for the agricultural classification. The report shall also contain the legal descriptions of those properties and the names of their owners that no longer qualify for the agricultural classification because of noncompliance with their forest management plans. No property shall be entitled to the agricultural classification unless the legal description and the name of the owner appear on the report submitted by the Colorado state forest service. The Colorado state forest service shall charge a fee for the inspection of each parcel of land in such amount for the reasonable costs incurred by the Colorado state forest service in conducting such inspections. Such fee shall be paid by the owner of such land prior to such inspection. Any fees collected pursuant to this subsection (4.4) shall be subject to annual appropriation by the general assembly. C.R.S. 39-1-102(4.4)

The current owner of the subject property did not execute the forest management plan and the plan was not transferred to the current owner. In addition, Petitioner did not comply with the annual plan for two years, although all three years of scheduled work was completed in 2004. Amendments to the plan are required if any deviation from the annual plans occurred. No amendments were made to the plan. Mr. Wand was aware of these deficiencies and recommended the forest land classification anyway, disregarding Colorado Forest Service rules related to deviations from the plan, as well as the statutory requirement that the plan be in the name of the property owner.

6. Based on all of the evidence and testimony presented, the subject property does not meet the qualifications for a forest land classification.

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 23rd day of June 2006.

BOARD OF ASSESSMENT APPEALS



Judge Nuechter

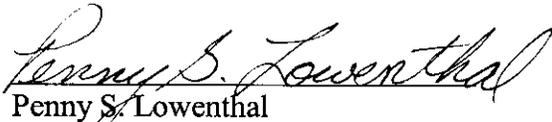


Karen E. Hart

This decision was put on the record

JUN 23 2006

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



Penny S. Lowenthal

