

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DAVID AND LANA WATERS,</p> <p>v.</p> <p>Respondent:</p> <p>MONTEZUMA COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 47705</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 3, 2007, Sondra W. Mercier and MaryKay Kelley presiding. Petitioners were represented by Michael F. Green, Esq. Respondent was represented by Robert Slough, Esq. Petitioners protested the 2006 classification of the subject property.

PROPERTY DESCRIPTION:

The subject property is described as follows:

**16415 Road 21.4, Cortez, Colorado
Montezuma County Schedule No. 5357-192-02-010**

The subject property consists of 46.56 acres in rural Montezuma County. Improvements on the subject property include a 4,152 square foot house and garages built in 1997. The residence is surrounded by professional landscaping and a pond. Most of the remaining acreage consists of pinion and juniper trees and areas of sagebrush and thistle. Respondent assigned an actual value of \$383,180.00 based on residential classification. Petitioners requested agricultural classification.

Petitioners purchased 36.56 acres of agriculturally-classified land and .25cfs of adjudicated water rights in 1995 and an adjoining 10 acres in 2005. With the intent of raising cattle and expanding pastureland for grazing, they installed fencing, purchased a farm tractor and heavy duty weed sprayer, trimmed and sprayed thistle and sagebrush, seeded and fertilized. When 2003 and 2004 droughts resulted in loss of water, they installed 2,000 feet of underground pipeline the following year and began re-irrigating. Petitioners purchased three head of cattle in November of

2006, which roamed freely on the northern corner of the subject property and onto neighboring land via a shared gate.

Petitioners testified that classification of the subject property was agricultural at time of purchase and that historical use was dryland grazing. The subdivision was developed for small farming operations, and neighboring properties include working farms and ranches. Without leases, neighbors have grazed cattle on the subject property in the past, paying \$5.00 per head per month in 2001 and 2002.

Respondent contended that the primary use of the subject property is residential and that the subdivision consists of 35-acre residential parcels. Petitioners did not present Respondent with proof of farming or ranching: a bill of sale for the cattle was not provided; three head of cattle were seen on the neighbor's land, not on the subject property; and no grazing fields were observed.

Based on the market approach, Respondent presented an indicated value of \$400,000.00 for the subject property. Respondent presented three comparable sales ranging in sales price from \$490,000.00 to \$640,000.00 and in size from 3,640 to 6,502 square feet. After adjustments were made, the sales ranged from \$390,020.00 to \$436,815.00. Comparable sale one, which had the fewest adjustments, was given the most weight.

Petitioners did not present sufficient probative evidence and testimony to prove that the subject property was incorrectly classified and valued for tax year 2006.

The statutory definition of agricultural land includes a parcel of land "that was used the previous two years and presently is used as a farm or ranch . . ." Colo. Rev. Stat. § 39-1-102(1.6)I (2006).

The statutory definition of a ranch is "a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit." § 39-1-102(13.5). The statutory definition of a farm is "a parcel of land which is used to produce agricultural products that originate from the land's productivity for the primary purpose of obtaining a monetary profit." § 39-1-102 (3.5). The Board was not provided proof of monetary profit from any activity on the subject property for 2006 or any of the prior years. No cattle were present in 2004 or 2005, and the purchase of three head of cattle in November of 2006 was in dispute. The Board was convinced that the subject property did not meet the statutory definition of a farm or ranch.

Petitioners referenced Douglas County Board of Equalization v. Clarke, 921 P.2d 717 (Colo. 1996), stating that absence of ranching was due to conservation practices. Pursuant to section 39-1-102(1.6)(a)(l) of the Colorado Revised Statutes, placement in a conservation reserve program or approval of a conservation plan must have occurred. According to the Assessor's Reference Library, the owner/operator "must be able to establish the type of conservation program or plan being practiced, either through a Conservation Reserve Program (CRP) or a plan approved by an appropriate conservation district . . ." 3 Assessor's Reference Library: Land Valuation Manual 5.11 (2007). The Petitioners did not present a conservation plan or program.

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 May 2007.

BOARD OF ASSESSMENT APPEALS

Sondra W Mercier
Sondra W. Mercier

MaryKay Kelley
MaryKay Kelley

This decision was put on the record

MAY 22 2007

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

Heather Heinlein
Heather Heinlein

