

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>BRIAN MCCARTHY,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 56135</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 28, 2012, Diane M. DeVries and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by Robert D. Clark, Esq. Petitioner is protesting the 2010 actual value of the subject property.

The parties stipulated to the market values derived by Respondent's witness for Schedule Numbers R0157403 and R0161939 should residential classification be determined. The parties stipulated to 6.31 acres for Schedule No. R0161939; the value remains in dispute.

Subject property is described as follows:

**2277 Twylby Road, Larkspur, Colorado
Douglas County Schedule Nos. R0157403, R0161947 and R0161939**

The subject property consists of three parcels: a 19.94-acre site with a residential improvement built in 1981 (Schedule No. R0157403); a vacant 6.67-acre site (R0161939); and a vacant 6.31-acre site (Schedule No. R0161947).

Respondent assigned residential classification to all three parcels with values of \$295,119 for Schedule No. R0157403, \$125,000 for Schedule No. R0161947, and \$125,000 for Schedule No. R0161939. Petitioner is requesting agricultural classification for the three parcels. Should residential classification be determined, he agrees with Respondent's recommended value for Schedule No. R0157403 and with the assigned value for Schedule No. R0161939, and he is requesting a value of \$118,253 for Schedule No. R0161947.

Mr. McCarthy described the subject parcels as consistent with agricultural classification per Section 39-1-102(1.6)(a)(I), C.R.S.: “A parcel of land that was used the previous two years and presently is used as a farm or ranch.”

Mr. McCarthy argued that the parcels produced hay (grown, cut, baled and sold), meeting the statutory definition of a “farm” per Subsection 3.5 of Section 39-1-102, C.R.S. (“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”). Due to drought, cutting and baling occurred in specific spring-like areas that were irrigated. He identified invoices for tax years 2008 and 2009 for sale of hay, noting that it was grown but not cut in the drought year of 2010.

Mr. McCarthy argued that grazing cattle met the statutory definition of a “ranch” per Subsection 13.5 of Section 39-1-102, C.R.S. (“a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit”). His three parcels were cross fenced and accessible to cattle, and a spring provided water. He identified an invoice for sale of cattle in 2008 and a grazing lease for 2010.

Mr. McCarthy discussed the presence of penned pigs and chickens, contending that, while fed, they also “grazed” on grass within their confines and were sold for profit.

Mr. McCarthy described horses grazing throughout the parcels but was unable to support sale for breeding, draft or profit.

Mr. McCarthy, referencing Respondent’s valuation for Schedule No. R0161947 (6.31 acres), noted that the parcel was smaller than Schedule No. R0161939 (6.67 acres) by 0.36 acre and should reflect a lower market value. He concluded to a value of \$118,253.

Respondent assigned residential classification for the subject parcels. While no on-site visits occurred in 2008 and 2009, inspections in January and June of 2010 noted no visual sightings of cattle or cattle droppings, and aerial photos did not confirm hay cuttings. Agricultural classification was replaced with residential classification for tax year 2010.

Respondent concluded to a value of \$245,000 for Schedule No. R0157403 (19.94 acres with a residential structure) based on the market approach. Respondent’s witness, Virginia K. Wood, Certified Residential Appraiser, presented three comparable sales ranging in sale price from \$279,100 to \$395,900. After adjustments were made, the sales ranged from \$230,365 to \$310,705. Ms. Wood relied on all three in her reconciliation.

Ms. Wood presented values of \$130,900 for Schedule Nos. R0161939 (vacant 6.67 acre site) and R0161947 (vacant 6.31 acre site), valuing them as vacant building sites. She presented four comparable sales ranging in sale price from \$130,900 to \$157,500. Sale One (\$130,900) was given most weight due to its similarity in size (6.7353 acres) and its location between the two vacant subject parcels. She disagreed with Petitioner that the smaller parcel should be valued for less; the 0.36-acre size difference is minimal, both are residential building sites, and both were compared to sales within a similar size range.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2010.

The Board is convinced that the statutory definition of farming and grazing was met during requisite tax years 2008, 2009 and 2010. Petitioner provided receipts and leases for tax years 2008 (hay & grazing), 2009 (hay), & 2010 (grazing). All three parcels are to be classified as agricultural.

The Board is not persuaded that chickens and pigs qualify as grazing animals per the statutory definition. While they eat and/or pick at grass, grass is not their primary food supply. The Board also finds that, although horses were observed on the northern subject parcel, they do not satisfy the definition of breeding, draft or profit.

The Board acknowledges Petitioner's contention that smaller vacant sites might carry less market value than larger sites. However, Respondent's valuation of "building sites" is also convincing, as is its grouping of similar-sized parcels. Also, Respondent's witness placed weight on a similar-sized lot with a value conclusion higher than that assigned.

ORDER:

Respondent is ordered to classify all three parcels as agriculture. Respondent is ordered to reduce the 2010 actual values of the subject property to \$135,737 for Schedule No. R0157403 and \$207 each for Schedule Nos. R0161947 and R0161939.

The Douglas County Assessor is directed to change their records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

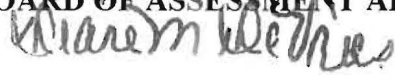
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

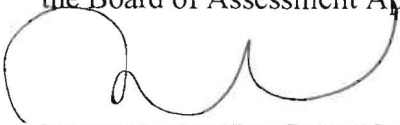
DATED and MAILED this 31th day of January, 2013.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries

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



Milla Crichton



MaryKay Kelley

