BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 62642
Petitioner: **ELLEN LIBBEY ANDREW,** v. Respondent: **TELLER COUNTY BOARD OF EQUALIZATION.**	

AMENDED ORDER

THIS MATTER was heard by the Board of Assessment Appeals on February 14, 2014, Diane M. DeVries and MaryKay Kelley presiding. Petitioner appeared *pro se*. Respondent was represented by Matthew A. Niznik, Esq. Petitioner is protesting the 2013 classification of the subject property.

Subject property is described as follows:

300 Elk Court, Divide, Colorado
Teller County Schedule No. R0014294

The subject is a 3,450 square foot residence built in 2009 on 35.01 acres in Elk Valley Estates. The 1,100 acre subdivision was developed in 1990 at which time it entered into a conservation easement for the protection of wildlife; agricultural classification was assigned per Section 39-1-102(1.6)(a)(III), C.R.S. Following construction of the home, the subject parcel was re-classified from agricultural to residential (tax year 2010).

Respondent assigned residential classification for tax year 2013. Petitioner is requesting agricultural classification.

Ms. Andrew based her request for agricultural classification on two statutes. Section 39-1-102(3.5), C.R.S. defines "farm" as 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. Section 39-1-102(1.6)(a)(I), C.R.S. requires, among other things, that a property be used as a farm or ranch for three consecutive years. Ms. Andrew presented written leases and proof of compensation

for the cutting and baling of hay for tax years 2012 and 2013 by Mr. Leggett (feed for his pleasure horses) and Mr. Johnson (feed for his cattle), respectively, but not for tax year 2011.

Respondent's witness, Betty M. Clark-Wine, Teller County Assessor, noted Petitioner's violation of Section 39-1-102(1.6)(a)(III), C.R.S., which requires 80 acres for agricultural classification if an improvement exists: "A parcel of land that consists of at least eighty acres or of less than eighty acres if such parcel does not contain any residential improvements, and that is subject to a perpetual conservation easement."

Ms. Clark-Wine also testified that Petitioner failed to meet the statutory requirement under Section 39-1-102(1.6)(a)(I), C.R.S. for tax years 2011 and 2012 because Mr. Leggett cut and baled the hay for his pleasure horses, which are not "livestock used for food, breeding, draft, or profit." She referenced Assessor's Reference Library 5.27: ". pleasure horses do not qualify as livestock used for food, breeding, draft, or profit ..."

Ms. Clark-Wine further testified that the District Wildlife Manager originally approved the cutting and baling of hay for the benefit of elk (weed control) and for wildfire mitigation despite prohibitions per the Deed of Conservation Easement, specifically "the operation of motorized vehicles" and "the removal, cutting or destruction of trees or native plants." She considered cutting and mowing to be incidental to the original goal; the subject parcel is not a working farm with the goal of monetary profit. She also noted, based on inspection, that the only evidence of cut hay was a drainage channel of one to two acres, not the entire parcel as described by Petitioner.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2013.

The Board finds that Petitioner's improved parcel (35.01 acres) fails to meet the statutory eighty-acre requirement as defined in Section 39-1-102(1.6)(a)(III), C.R.S.

The Board is not persuaded that the subject parcel qualifies as a "farm" per the statutory definition. The Board found that the cutting and baling of hay occurred within a one-to-two-acre drainage area and was instigated for wildfire mitigation and weed control for the benefit of migrating elk. Additionally, the Deed of Conservation Easement prohibited motorized vehicles and the removal, cutting and destruction of native plants on the subject. The Board agrees with Respondent that farming of the subject was "incidental."

ORDER:

The petition is denied.

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-nine 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-nine 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 13th day of May, 2014.

SEAL

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

MaryKay Kelley

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

Milla Lishchuk

62642