

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 63939

Petitioner:

LINDA WEIXELMAN,

v.

Respondent:

LARIMER COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on May 1, 2014, James R. Meurer and MaryKay Kelley presiding. Gary Weixelman, brother, appeared *pro se* on behalf of Petitioner. Respondent was represented by David P. Ayraud, Esq. Petitioner is protesting the 2013 classification of the subject property.

Subject property is described as follows:

**4318 Green Mile Drive, Laporte, Colorado
Lot 1, Weixelman-Mae MLD No. 03-S2147
Larimer County Schedule No. R1626431**

The subject is a vacant 34.7827 acre site accessed from U.S. Highway 287 by a dirt road. Petitioner purchased a 44.479 acre tract in 1990 that was later split into two parcels, a ten-acre improved lot and the vacant subject parcel. Residential construction is prohibited on the vacant site until a subdivision application is approved. The subject parcel holds a 2/3 interest in a well located on the adjoining Lot 2.

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

Petitioner described the legal entities related to this case.

North Fork, LLC, original owners Donald and Diane Weixelman (parents). Father's ownership transferred to his children on his death (April 1, 2011); Petitioner reports 1/16 ownership.

Beaver Meadows Resort Ranch, LLC ("Ranch") is the real estate that includes lodging and restaurant. It is owned by North Fork, LLC.

Beaver Meadows Enterprises, LLC is the company operating the facilities, food and beverage services for Beaver Meadows Resort Ranch. It is owned by Petitioner and her mother (Diane).

Beaver Meadows Stables, LLC ("Stables") operates the horse-related activities at Beaver Meadows Resort Ranch. It is owned by North Fork, LLC and is leased to Clara Glaze.

Ms. Weixelman testified that North Fork, LLC began leasing the Ranch's horseback riding business (the Stables) in 2007. She presented North Fork's current lease with Clara Glaze (October 1, 2010 through September 30, 2037). Payment is \$11,000 per year adjusted annually. The lease guarantees 250 acres of pastureland; locations are not specified.

Petitioner presented a grazing lease for the subject parcel. She is the lessor and North Fork, LLC the lessee. Lease dates are November 1, 2010 through October 31, 2015. This arrangement fulfills part of the pastureland guaranteed in the lease between North Fork, LLC and Clara Glaze. The subject parcel is located approximately 43 miles from the Ranch and is used for winter grazing. If Ms. Weixelman were to sell her property, North Fork, LLC would have to secure pasture land elsewhere. She receives \$50 per year for pasturing no more than twenty-five horses and reported that up to twenty horses have grazed the subject property annually since 1990.

Petitioner's witness, Clara Glaze, owner of the horses and operator of the Stables operation, testified that she has worked on the Ranch since 2005. Witness James Pearl, owner of Snowcap Stables and an occasional employee of the Ranch (shoeing horses, trading horses, building fences), verified that Clara Glaze pastures horses on the subject parcel in winter months. Both witnesses supported Petitioner's contention that horses have grazed the subject parcel annually for decades.

Respondent's witness, Jody Masters, Certified General Appraiser, inspected the subject parcel during tax years 2011, 2012 and 2013 and saw no evidence of winter grazing. Fences were down and knee-high grasses existed.

Ms. Masters referred to the lease between North Fork, LLC and Clara Glaze for pasturing horses, noting that Petitioner had no ownership in North Fork, LLC on the date of execution (November 1, 2010).

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

"Agricultural land" is "a parcel of land...that was used the previous two years and presently is used as a farm or ranch...or that is in the process of being restored through conservation practices." Section 39-1-102(1.6)(a)(I), C.R.S. 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."

Section 39-1-102(13.5), C.R.S.; *see also Douglas County Board of Equalization v. Clark*, 921 P.2d 717, 721 (Colo. 1996).

The Board is persuaded by Petitioner and her witnesses' testimony that horses grazed the subject property during winter months in tax years 2011, 2012 and 2013.

The Board refers to North Fork's lease with Clara Glaze for operation of the Stables. Paragraph 37 reads "Each and every provision of this Lease shall bind and shall inure to the benefit of the parties hereto and their legal representatives. The term 'legal representatives' is used in this Lease in its broadest meaning and includes, in addition to executors and administrators, every person, partnership, corporation, or association succeeding to the interest or to any part of the interest in or to this Lease or in and to the Leased Premises, of either the Landlord or the Tenant herein, whether such succession results from the act of a party in interest, occurs by operation of the law, or is the effect of the operation of law together with the act of such party. Each and every agreement and condition of this Lease to be performed shall be binding on all permitted assigns, subtenants, concessionaires, and/or licensees of the Tenant."

The Board interprets this verbiage to mean that Petitioner became a part owner of North Fork, LLC by succession on April 1, 2011, the date of her father's death. The Stables contract between North Fork, LLC and Clara Glaze and the pastureland contract between North Fork, LLC and Petitioner are both valid per the Board. The fact that Petitioner was not the owner of North Fork LLC on the date of the execution of the November 1, 2010 lease is irrelevant.

The Board finds that the statutory definition of agriculture has been met: Petitioner is an owner by succession of North Fork, LLC and is, therefore, legally bound by the Stables lease with Clara Glaze; Petitioner received monetary profit for use of her pasture land; and the subject parcel was grazed during tax years 2011, 2012 and 2013.

The Board concludes that the subject property should be classified agricultural for tax year 2013.

ORDER:

Respondent is ordered to classify the subject property as agricultural for tax year 2013.

The Larimer 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-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 9th day of May, 2014.

BOARD OF ASSESSMENT APPEALS

James R. Meurer

MaryKay Kelley

MaryKay Kelley

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

Milla Lishchuk

