

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 68677

Petitioner:

**MARION J. WELLS, INHERITOR & PR, ESTATE
OF WAYNE E. WELLS,**

v.

Respondent:

GARFIELD COUNTY BOARD OF EQUALIZATION.

AMENDED ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 9, 2016, James R. Meurer and MaryKay Kelley presiding. Marion J. Wells appeared as Petitioners' Personal Representative. Respondent was represented by Janette Shute, Esq. Petitioners are protesting the 2015 actual value of the subject property.

Subject property is described as follows:

**S. 32, T. 6, R. 94 NESW, Parachute, Colorado
Garfield County Schedule No. R024275 (40 vacant acres)**

**S. 5, T. 7, R 94, Parachute, Colorado
Garfield County Schedule No. R024276 (5.3 vacant acres)**

**6691 County Road 309, Parachute, Colorado
Garfield County Schedule No. R270462 (186.4 acres with an improvement)**

The subject consists of three parcels. All three carry agricultural classification. They are adjoined with little interior fencing and are traversed by ditches and Cache Creek. Uses include grazing, wheat farming, and an irrigated grape vineyard. In 2007, a fire has impacted vegetation on twenty acres, as did an underground gas pipeline.

Respondent assigned an actual value for Schedule No. R024275 of \$840 which is supported by an appraised value of \$1,010. Respondent assigned an actual value for Schedule No. R024276 of

\$130 but is recommending a reduction to \$110. Respondent assigned an actual value for Schedule No. R270462 of \$203,830, which is supported by an appraised value of \$269,380.

Petitioners are requesting a value of \$455 for Schedule Number R024275, a value of \$60 for Schedule Number R024276, and a value of \$116,085 for Schedule Number R270462.

Ms. Wells, having occupied the property since 1964 and with intimate knowledge of the land, contended that Respondent's witness viewed and photographed the parcels from county roads but failed to thoroughly inspect them; she dismissed general topographic maps, aerial photos, and soil maps as substitutes for an inspection. She argued that the witness failed to observe the lack of water or irrigation, the pervasive cheatgrass, and the rocky burn area, among other negative features. The ten-year average income and expenses does not account for changes in climate, multiple benches with varying vegetation, freezes, and wildlife damage.

Ms. Wells disagreed with Respondent's description and analysis of the land. She testified to the multiple issues with the land, stating that native wheat, needle, and thread grasses were rare. The 2007 fire impacted 20 (not 9.5 according to Respondent) acres; the burn area was not irrigated, had no forage, will take decades to recover, and should have been classified as "wasteland." According to Ms. Wells, most of the property had low grazing value as it was covered in dense trees and brush without water. Schedule Number R024275 had more than two benches, the pad covered seven acres, and the grasses mentioned by Respondent did not exist. Respondent's description of Schedule Number R024276 showed incorrect grazing acreage; the parcel was steep, without water, and was, therefore, wasteland. And Respondent's description of Schedule Number R270462 reported incorrect acreage for meadow hay, grazing and irrigated areas.

Ms. Wells presented an analysis of the subject property by Michael R. Kinser, Back40Solutions, L.L.C., and Bureau of Land Management (1981-2011), retired. He prepared a written assessment but did not appear as a witness. He categorized the subject soil's carrying capacity for grazing into five land classes per National Resource Conservation Service (NRCS) soil mapping and Bureau of Land Management (BLM).

Land Class 58 (98 acres); 25-45% slope, no stones to very stony, Juniper canopy, understory of cheatgrass and few perennial grasses, 20-acre fire burn (2007), 7.3 acre gas pad, 0.5 acre gas line, 1.5 acre county road, 2.7 acre power line, low grazing value.

Land Class 59 (58 acres); 25-45% slope, mostly stony, Juniper and few perennials, 1.6 acre power line and 0.4 acre gas pipeline, low grazing value due to cheatgrass.

Land Class 69 (8 acres): 6-12% slopes, Juniper and sage, 1 acre gasline (grassy with fair grazing), poor grazing value due to dominance of cheatgrass and few perennials.

Land Class 34 (61 acres); 25-45% slope with tree cover (canopy of juniper and junior canopy of sagebrush), stony to very stony (15-60% stones), understory dominated by cheatgrass, few perennial grasses, low grazing value due to slope and tree cover.

Land Class 44 (8 acres); 3-12% slopes, 6.6 acre dryland pasture dominated by cheatgrass, 1.4 acres of native rangeland, poor range due to cheatgrass.

Mr. Kinser concluded that most of the subject property had an understory dominated by cheatgrass and few perennial grasses; cheatgrass is a pervasive weed and should not be included as forage production. Concluding that the potential for grazing was poor, Mr. Kinser determined the carrying capacity for grazing to be 384 acres per animal unit or wasteland.

Respondent's witness, Amber Knox, Ad Valorem Appraiser for the Garfield County Assessor's Office, testified that her experience includes farming and ranching. She did not walk Petitioner's land and based her valuation on aerial views, arguing that this was a common practice.

Ms. Knox noted that the Assessor's Reference Library requires agricultural land in Colorado to be valued exclusively by capitalization of net landlord income. Section 3(1)(a), article X of the Colorado Constitution provides that the actual value of agricultural lands must be determined solely by consideration of the earning or productive capacity capitalized at a rate as prescribed by law. The income stream to be capitalized is the economic net income, which is derived from the earning or productive capacity of the land after allowance for typical expenses.

Ms. Knox based her analysis on physical inspection (July of 2015) and soil maps; USDA, Soil Conservation Service, Colorado Agricultural Experiment Station, and the NRCS. She valued the subject parcels in conjunction with the entire Wells Ranch, which has a lease to graze typically 124 days per year for four animal units. Valuation involved calculation of gross income, net income following expenses, and actual value divided by statutory capitalization rate.

Ms. Knox outlined the five land classes as follows:

Land Class 58 (113.9 acres); 12-25% slope, 14% annual precipitation, multiple grasses, good soil, good grazing, normal year 800 pounds/acre dry-weight production, 40 acres/AUM.

Land Class 59 (49.2 acres); 25-45% slope, hilly to very steep, multiple grasses, well-drained soil with low erosion hazard, normal year 800 pounds/acre dry-weight production, fair grazing, 60 acres/AUM.

Land Class 69 (5.6 acres); irrigated crops and hay (dry-weight production normal year 1,500 pounds/acre), 6-12% slope, well-drained soil, multiple grasses, irrigated and non-irrigated, proper management and seeding necessary.

Land Class 44 (6.7 acres); 3-12% slope, some grasses, normal year 1,500 pounds/acre production.

Land Class 34 (56.3 acres); 25-45% slope, no cultivation, steep and rough and susceptible to erosion (fair grazing), 60 acres/AUM.

Ms. Knox described the three subject parcels and estimated value as follows:

Schedule R024275 (40 acres of agricultural land)

This parcel, in addition to its grazing lease, has grape orchards with drip irrigation. Ms. Knox described the soil as suitable for permanent vegetation for grazing (moderately sloping, and subject to wind and water erosion); grazing was limited to the carrying capacity and rotation so as to allow growth of grass and recovery of vegetation. Ms. Knox determined land classification to allow 40 acres per animal unit months, and value was estimated to be \$1,010 rounded.

Schedule Number R024276 (5.3 acres of agricultural land)

Ms. Knox described this parcel as having fair grazing capacity with severe restrictions if used for pasture. It was steep, rough, non-irrigated, and eroded or highly susceptible to erosion. Value was estimated at \$80, rounded (grazing land 40 acres per animal unit) and \$30, rounded (grazing land 60 acres per animal unit) for a total of \$110, rounded.

Schedule Number R0270462 (186.4 improved agricultural land)

Ms. Knox described this parcel as mostly flat to sloping with some steep hillside. It is dissected by two county roads, Cache Creek, and five other ditches. She established values for multiple soil classifications; \$7,900, rounded, for Class IVe (flood irrigated or non-irrigated with a productivity of 2.5 tons), \$1,780, rounded, for Class VIe (grazing land 40 acres per animal unit), \$1,330, rounded, for lass VIIe (grazing land 60 acres per animal unit) for a total of \$11,010.

Ms. Knox valued the subject's residence independently of the land. She presented five comparable sales ranging in price from \$305,000 to \$352,695 and, along with other adjustments, subtracted each of their allocated land values. She derived adjusted sale prices that ranged from \$195,413 to \$290,000 and concluded to an indicated value of \$255,000 for the subject improvement.

Ms. Knox presented a Cost Approach for the subject's Quonset hut, which was built in 1983. She applied Marshall & Swift Valuation Service data for the Class D structure with 80% depreciation and concluded to a value of \$3,370, rounded.

Ms. Knox, in response to Petitioner's request for "wasteland" classification, presented definitions per the ARL, NRCS, USDA and Soil Conservation Service. The sources define "wasteland" as unsuited for cultivation or grazing. Ms. Knox testified that the subject parcels do not meet the low standards for "wasteland."

Petitioners presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2015.

Due to acreage, distance, and terrain, the Board understands the necessity of the assessor's mapping and aerial photos. At the same time, the Board is confident that the assessor's staff would welcome an on-site inspection if offered.

Ms. Wells testified extensively about cheatgrass, a pervasive weed that dominates healthy vegetation and impacts forage and grazing. Respondent's witness testifies to the importance of good management (tillage, spraying, and seeding). The Board finds Ms. Wells to be a credible witness. At the same time, Respondent's emphasis on good management (tilling and seeding) is valid.

Allowing for the impact of cheatgrass on grazing and for the reduced forage acres, the Board calculates gross income at 60 acres per AUM rather than Respondent's 40. Recalculation is as follows:

Schedule Number R024275	\$ 500 RD
Schedule Number R024276	\$ 49 RD
	\$ 30 RD
	<u>\$ 79 RD</u>
Schedule Number R270462	\$ 900 RD
	\$ 1,330 RD
	\$255,000 (residence)
	\$ 3,370 (Quonset hut)
	<u>\$260,600 RD</u>

The Board is not convinced that the subject parcels qualify for "wasteland" classification; sufficient forage is available for grazing. The Board is also persuaded that proper management and seeding are critical to maintain forage.

ORDER:

Respondent is ordered to reduce the 2015 actual value of the subject property to \$500 for Schedule Number R024275 and \$79 for Schedule Number R024276. The Board's recalculation supports Respondent's assigned values of **\$193,580** for the residence and **\$2,360** for the Quonset hut in Schedule Number R270462; the Board's recalculation of Respondent's assigned value of the agricultural land results in a reduction to **\$2,230**.

The Garfield County Assessor is directed to change his/her 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.

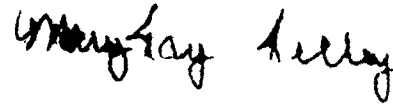
Section 39-8-108(2), C.R.S.

DATED and MAILED this 4th day of August, 2016.

BOARD OF ASSESSMENT APPEALS

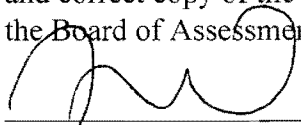


James R. Meurer



MaryKay Kelley

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



Milla Lishchuk

