BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	Docket No.: 70872
Petitioner: **HUDSON D. PELTON,** v. Respondent: **ARAPAHOE COUNTY BOARD OF EQUALIZATION.**	

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 5, 2018, Louesa Maricle and Gregg Near presiding. Petitioner appeared pro se. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioner is protesting the 2017 classification and the actual value of the subject property.

The Board admitted Petitioner's Exhibit 1 and Respondent's Exhibits A-C.

Subject property is described as follows:

54356 E Bobcat Lane
Strasburg, CO 80136-9305
Lot 14, Block 1, Strasburg Heights
Arapahoe County Schedule No. 1983-00-0-03-003/031550564

The subject property consists of a 5.00 acre parcel located in the Strasburg Heights Subdivision south and west of the Town of Strasburg, south of Interstate 70. The parcel is rectangular and is improved with a single family ranch style home containing 2,268 square feet (sf) with a 2,268 sf unfinished basement. Other site improvements include a 720 sf detached garage, 2,400 sf barn and a 200 sf pole barn.

Respondent assigned a value of $419,500 for the subject property for tax year 2017 but is recommending a reduction to $370,000 based on a site specific appraisal. Respondent argues the property does not meet the requirements for agricultural classification. Petitioner is disputing the

residential classification of the property and is requesting agricultural land classification. Petitioner is requesting a 2017 actual value of $360,000.

Petitioner's Evidence

Petitioner testified to the condition of the residence indicating the home was subject to flooding during heavy rains because all the neighboring properties drain toward the home. The drainage problem results in flooding to the basement which could potentially make the residence hard to sell. Construction of berms and retaining walls has been unsuccessful to mitigate the situation. Four sump pumps have been installed but during the period under question there has not been a significant rain so the adequacy of this repair is currently unknown.

Mr. Pelton stated he has used the property for agriculture over the preceding 10 years with the intent to make a profit from raising cattle. Petitioner stated he has always attempted to make a profit but, to date, he has been unsuccessful. In 2014 Petitioner tilled the land. In 2015 the land was reseeded in preparation for growing hay in 2016. In 2016, hay on the subject was harvested and used to feed Petitioner's live stock. However, hay harvested on the subject in 2016 was insubstantial and Petitioner purchased additional feed to sustain the animals. Although Mr. Pelton had grown and harvested hay in 2016 the grazing area was insufficient to support his larger herd and he leased additional land for grazing. According to Petitioner, he has lease agreements to graze his animals on five other properties. Petitioner testified that the animals are grazing on the leased properties during the grazing season. Per Petitioner, one to two animals are staying on the subject property year around because they are either sick or too young.

Petitioner is requesting agricultural classification and an actual value of $360,000 for the subject property for tax year 2017.

Respondent's Evidence

Respondent's first witness, Mr. Daryl Becker, Land Appraiser with the Arapahoe County Assessor's Office, testified that he develops agricultural data and inspects properties to confirm operation under the law. Mr. Becker also referenced his experience living and working on a farm. The witness produced a classification report in regard to Petitioner's property. Mr. Becker indicated the most important part of establishing appropriate classification was determining the productivity of the land and how it was used. The witness referenced research via aerial sources from 2012, 2014 and 2016. According to the overhead views, the images showed mostly grass and cover crops only. Any cows observed on the property were penned and not using the land. The witness did not dispute there were cows on the property but determined the land was not used productively as there was only incidental grazing on the property. According to Mr. Becker, the subject's soil class has the assumed capacity of sustaining one animal unit per 25 acres. Hence, the subject property's two-acre grazing area would only support 1/8 animal unit. The witness testified that he observed animals grazing on the property only once, on May 4, 2018. He also stated that grazing season in Colorado starts in April and ends in October. According to Mr. Becker, Petitioner's animals graze on leased property during the grazing season and stay penned at the subject property during the non-grazing season. Mr. Becker stated that keeping penned animals on the property does not qualify land for agricultural

classification.

Respondent's second witness, Ms. Melissa S. Guzzino, an Ad Valorem Appraiser for the Arapahoe County Assessor's Office, provided a site specific residential appraisal for the subject property. The witness described her site visit which included an interior inspection of the residence. Ms. Guzzino reported the basement area was used for storage and she did not see evidence of flooding. The witness referenced Exhibit B, page 27, illustrating her comparable sales and adjustments. In describing the adjustment grid, Ms. Guzzino pointed to the proximity of all the comparable sales (ranging from next door to 1.1 miles). Giving most weight to sales No. 1 and No. 2, the witness concluded a value for the subject of $370,000.

Board's Findings

Section 39-1-102(1.6)(a)(I), C.R.S. defines, in pertinent part, agricultural land as follows: "a parcel of land . . . which was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices..."

Based on the statutory definition of agricultural land, in order to qualify for agricultural classification for tax year 2017, the subject property must have been used the previous two years (2015 and 2016) plus the tax year in question (2017) as a "farm" or a "ranch."

Use as a "farm"

Per subsection 3.5, "farm" means 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, C.R.S. (emphasis added). Colorado Supreme Court interpreted the phrase, "originate from the land's productivity" to require "some connection between the agricultural product and the productivity of the land which is being valued." *See, e.g., Welby Gardens v. Adams County Board of Equalization*, 71 P.3d 992, 995 (Colo. 2003). Specifically, the connection is that the agricultural product must "originate" from the land's productivity. *Id.* at 995. The Court referred to the Webster's commonly understood definition of "originate," namely, to "give rise to." Thus, the Court concluded, for a parcel of land to qualify as a "farm," the land's productivity must give rise to the agricultural product. *Id.* The connection, or nexus, between the agricultural product and the land such that the agricultural product arises from the land's productivity must be more substantial than merely providing a location for the placement of a structure in which agricultural products are produced. *Id.* at 994.

Based on the evidence and testimony presented at the hearing, the Board is not convinced that the subject was used as a "farm" during the three-year period from 2015 to 2017 as required by statute. Although ample evidence was presented that the cattle was present on the subject during off-grazing season in each year in question, simply providing a location for the livestock products is insufficient to establish a nexus between the cattle and the land's productivity. In other words, it cannot be said that the land's productivity "gives rise to" the cattle being housed on the property or, conversely, that the cattle "originate" from the land's productivity. To the contrary, the evidence

presented at the hearing was undisputed that the cattle has been crazing on leased land during the grazing season; the animals were penned on the subject during the off-grazing season.

Analysis of Petitioner's haying operations on the subject does not lead to a different conclusion. To begin with, there is no dispute that some hay originates from the land's productivity. The Board is also willing to accept that hay grown on the subject was used to sustain, at least partially, the cattle housed on the subject parcel which, in turn, have been bred by Petitioner for purposes of obtaining monitory profit. Hence, haying operations on the subject, including the re-seeding in 2015 and harvesting of the hay in 2016 are sufficient to qualify the subject as a "farm" during those two tax years. However, Petitioner had apparently abandoned all haying efforts and no hay was seeded or harvested on the subject in 2017. Since no haying took place on the subject in 2017 and no other agricultural products originated from the land's productivity in 2017, the subject does not qualify for agricultural classification based on use as a "farm" for tax year 2017.

Use as a "ranch"

Subsection 13.5 defines "ranch" as "a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monitory profit." Section 39-1-102, C.R.S. The plain meaning of the phrase "used for grazing" as interpreted by Colorado Supreme Court in *Douglas County Board of Equalization v. Edith Clarke*, 921 P.2d 717, 723 (Colo. 1996), is that livestock actually graze the land. If the land is not being used for grazing, then the taxpayer must prove that the non-use is reasonably related to the overall grazing operation – such as deferred use as part of a grazing rotation plan; such as protecting the land to enhance productivity of forage for future grazing needs; or such as reseeding or fertilization. The non-use must be both purposeful and an integral part of the grazing operation. Basic unsuitability of the land for grazing will not suffice to excuse non-grazing. *Id.* at 723-24.

The subject parcel is not suitable for grazing the quantity of livestock that Petitioner owns. The type and quality of the soil on the subject parcel would necessitate minimally 25 acres to sustain a single head of cattle. That is, the subject's 2.5 acres available for grazing has the capacity of feeding .8 of one unit of livestock. For that reason, Petitioner has been maintaining leases with five other properties to graze his livestock outside the boundaries of the subject parcel during the grazing seasons. The subject has historically been used by Petitioner solely to house the animals during the off-grazing season. Because the subject parcel could not have been, and has not been used for grazing Petitioner's livestock, Petitioner's parcel could not be defined as a "ranch" during the 2015, 2016 and 2017 tax years in question.

The burden of proof in BAA proceedings is on the taxpayer to establish the basis for any reclassification claims concerning the subject property. *Home Depot U.SA, Inc. v. Pueblo Cty. Bd. of Comm'rs*, 50 P.3d 916, 920 (Colo. App. 2002). After careful consideration of all of the evidence presented by the parties, the Board concludes that Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2017.

Valuation

After careful consideration of the testimony and exhibits presented at the hearing, the Board concludes that Respondent's evidence was the most credible with respect to the valuation of the subject property for tax year 2017. In valuing the subject, Respondent presented a comprehensive site-specific appraisal report. The Board was convinced that Respondent's comparables are similar to the subject and the adjustments to those comparables are supportable within the market.

The Board is not convinced that additional adjustment to account for the flooding concerns expressed by Petitioner is necessary. Numerous preventative measures have been put in place to prevent future flooding, such as sump pumps and trenches for diverting water flow away from the residence. Further, Respondent's visual inspection of the subject did not reveal any water damage and the area of the home that Petitioner indicated had flooding concerns appeared to have been used by Petitioner for storage.

Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Petitioner did not produce sufficient probative evidence to convince the Board that Respondent's valuation of the subject for tax year 2017 was incorrect.

ORDER:

Respondent is ordered to reduce the subject's 2017 value to Respondent's recommended value of $370,000.

The subject shall remain classified as residential for tax year 2017.

The Arapahoe 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 6th day of August, 2018.

BOARD OF ASSESSMENT APPEALS

Louesa Maricle

Gregg Near

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

Milla Lishchuk

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS