

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>KEVIN B. DANIELS,</p> <p>v.</p> <p>Respondent:</p> <p>ELBERT COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 74528</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 3, 2019, Diane M. DeVries and Amy J. Williams presiding. Petitioner, Kevin Daniels, appeared pro se. Respondent was represented by Bartholomew S. Greer, Esq. Petitioner is protesting the 2018 classification of the subject property.

Petitioner’s Exhibits 1 through 5 were admitted into evidence; Respondent’s objection as to timeliness of the exhibits was noted. Respondent’s Exhibits A through J were also admitted.

Subject property is described as follows:

**Unaddressed, 38.75-acre parcel of vacant land located in Section 22,
T7N, R65W of the 6th P.M., Elbert County, Colorado,
Elbert County Schedule No. R117229**

The subject property is located along the western boundary of Elbert County, northwest of the Town of Elizabeth and adjacent to Douglas County’s eastern boundary. As the property is 38.75 acres of vacant land, no address has been assigned to the property at this time.

Petitioner is requesting agricultural classification for the subject property for tax year 2018.

Petitioner, Mr. Kevin Daniels, was sworn in as the only witness. Mr. Daniels stated that cattle grazed the property in 2017 based upon a verbal agreement with his brother that had been in place for many years. He testified that the overall family property was approximately 160 acres in size, with each of four siblings being given approximately 40 acres upon the death of their father.

Two of the roughly 40-acre parcels comprising the family property are located in Douglas County and two roughly 40-acre parcels are located in Elbert County. The subject being one of the approximately 40-acre parcels in Elbert County. Mr. Daniels stated that the portion of the family property located in Douglas County had not had their property classification changed from Agricultural to Vacant. He further testified that his father had historically grazed cattle on all four of the family properties and that his brother, owning one of the parcels in Douglas County, had continued that practice after his father was no longer able to manage the operation. Mr. Daniels offered Petitioner's Exhibit 2, a written grazing lease with his brother, Cliff Daniels, for the term of one year beginning January 1, 2018, and reiterated that previous, similar agreements with his brother had been verbal in nature.

Respondent called Eric Guthrie, Appraiser, Elbert County Assessor's Office, as a witness. Mr. Guthrie testified that when classifying land as agricultural, continuous use and profit motive are necessary. He further stated that Petitioner was vague as to the agricultural activity taking place on his property and stated that reduced property taxes were his motivation for the agricultural activity on his property. Petitioner had provided to the Elbert County Assessor's Office proof of purchase of one steer, but no proof of sale of said steer. Thus, the profit motive was in question. Mr. Guthrie testified that prior employees within the Elbert County Assessor's Office had viewed the property and found no evidence of cattle; no feces, no trails, no water source.

Upon cross examination, Mr. Guthrie agreed that if the steer was grazing an area larger than the subject, the source of water would not necessarily have to be on the subject property.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax year 2018.

Statewide, agricultural classification for property tax purposes is governed by Section 39-1-102(1.6), C.R.S. Additionally, agricultural land classification guidance is offered by the Assessor's Reference Library (ARL). In the subject instance, Respondent is seeking agricultural classification pursuant to a statutory definition of a "ranch." Section 39-1-102(13.5), C.R.S. defines "ranch" as "a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), 'livestock' means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit." The ARL directs Assessors to use a two-prong test for agricultural classification under the definition of "ranch." First, the land must be grazed by livestock. Second, the use of the grazing livestock must be for the primary purpose of obtaining a monetary profit.

As to the first prong of the test, evidence and testimony presented before the Board support that the land was grazed by livestock, in this instance a steer or steers. It is noted that Respondent did not find evidence of this grazing when viewing the property. However, documentation of animal purchase and testimony of historic and current grazing agreements in place are more persuasive than the failure to find cow pies on the subject 38.75-acre portion of the larger 160-acre grazing area, particularly when the water source for said grazing animals is not located on the subject land.

As to the second prong of the test, Petitioner supplied a receipt for sale of two steers dated November 5, 2018 which speaks to income from the sale of the livestock for that year. Conversely, Respondent erroneously contends that the parcel does not qualify for agricultural classification because Petitioner, who owns the subject parcel, has no profit motive with respect to the land. However, “[t]here is no requirement in the statute that the property *owner* be the one who grazes livestock on the parcel for the primary purpose of making a profit or that the owner's leasing activity be conducted for profit to the owner. Rather, the statute requires only that the land actually be used for grazing livestock, which, in turn, must be done for the primary purpose of obtaining a profit from the grazing activity.” *Estes v. Colo. State Board of Assessment App.*, 805 P.2d 1174, 75 (Colo. App. 1990). Therefore, without evidence to the contrary, the Board ascribes typical motivations of Petitioner’s lessor to the use of the grazing livestock, as supported by the receipt of sale of two steers, that of a desire for profit from the use of said livestock.

ORDER:

The petition is granted.

The Elbert County Assessor’s Office is ordered to classify the subject property as agricultural land for tax year 2018 and value the subject 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 16th day of July, 2019.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Diane M. DeVries

Amy J. Williams

Amy J. Williams

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

Milla Lishchuk

Milla Lishchuk

