

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>RALPH K. & ANN L. JONES,</p> <p>v.</p> <p>Respondent:</p> <p>MONTROSE COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Ralph K. Jones Address: 61604 Falcon Road Montrose, Colorado 81401 Phone Number: (970) 323-5098 Attorney Reg. #</p>	<p>Docket Number: 37232</p>
<p>ORDER (On Retaining Jurisdiction)</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 9, 2001, Karen E. Hart, Karl Von Burg, and Mark R. Linné, presiding. Petitioner, Ralph K. Jones, appeared pro se. Respondent was represented by J. Patrick Coleman, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**LOT 3 HUDSON MINOR SUB 24-50-10
(Montrose County Schedule No. R0015038)**

Petitioners are protesting the 2000 actual value of the subject property, which consists of a single-family residence comprising a total of 1,187 square feet, situated on a site comprising 4.24 acres, located at 61604 Falcon Road, in Montrose, Colorado.

ISSUES:

Petitioners:

Petitioners contend that the Respondent has overvalued the subject property by not properly classifying the subject property as agricultural, under statutory provisions that permits agricultural status for property tax purposes for properties such as the subject. The residential component of the greater property only consumes 13% of the total property. The primary question should be whether or not the property qualified as agricultural in the two years prior to the assessment date. The Petitioner contends that he lived at the residence and worked the land. He additionally contends that he raises cattle and crops for a profit.

Respondent:

Respondent contends that the assigned value of the subject property is supported by sales of similar properties, similarly situated, during the appropriate base period. The county has dealt with numerous properties of this type. The change in classification from agricultural to residential was due to the subdivision of the property from a larger parcel. The subject property is not being used to gain a monetary profit from the agricultural uses. The agricultural uses are incidental to the primary residential uses, and for this reason, the property should be valued as a residential property.

FINDINGS OF FACT:

1. Ralph Jones, the Petitioner, testified with respect to the lease on his property. He showed photos demonstrating livestock use, including cattle and pigs grazing on the land. The Petitioner testified that the assessor did not believe that pigs graze, but he presented the photos to demonstrate that not only do they graze, but they root as well.

2. The Petitioner presented photos showing lamb and cattle stock on site. He testified that he and his family live in the original farmhouse for the property. A portion of the property is leased for horse pasture, and the family has pigs and cattle. The previous owner, who owns an adjacent site, runs cattle on the subject site.

3. Mr. Jones testified that the ratio of agricultural uses to other uses on the land is 13% for the residential use and 87% for agricultural use.

4. The Petitioner testified that adjacent properties are utilized for growing onions, beans and tomatoes, and that horses graze in the area.

5. Mr. Jones testified that though the county has indicated that a portion of his land is not usable because it is a leach field, the land is still capable of being utilized by horses for grazing. Additionally, some of the land is used for growing hay.

6. In describing his land, the Petitioner testified that the location of his land vis-à-vis urban areas was such that he had no water or sewer service, no cable service, and no cell phone service.

7. The Petitioner testified that he felt that his land was economically compatible for agricultural uses. He has rotated animals and crops, and has been very economic in his use of the land.

8. The Petitioner cited an article in the local paper that indicated that market conditions were such that it was very difficult for any agricultural uses to be run in a profitable manner. The Petitioner further indicated that the article stressed that not many farmers can make a living farming due to depressed markets and other factors.

9. Mr. Jones testified that the subject land is being used to its greatest potential with the hay, cattle, pigs, and sheep. At the present time, the property supports two cows, eight pigs, and eight sheep. The Petitioner indicated that he participates in sheep industry and crop growers associations.

10. The Petitioner testified under cross-examination that the horses on the property are not pleasure horses but, rather, are breeding horses. Mr. Jones indicated that though the livestock operation has had a loss each year on crop production, he actually grows hay, most recently 2 tons (75 bales of hay), with compensation of \$150.00/ton in sale value.

11. Mr. Jones testified that he was unaware of the cost of irrigation water. He did not fertilize the land. He further indicated that he did not harvest the hay, but rather had it harvested by others. The cost for harvesting the hay was \$65.00, which was cheaper than purchasing the hay from others.

12. Mr. Jones testified that approximately 4.2 acres of the property was fenced. Prior to the current ownership, the property was part of a larger lot containing approximately 20 acres.

13. In response to a question regarding leasing the property for profit, the Petitioner testified that the property produced a total of \$708.00 in gross income from sale of product produced on-site.

14. Mr. Jones testified that one lamb per year was slaughtered between 1998 and 2000.

15. In response to questions from the Board, Mr. Jones testified that he purchased the subject property in December of 1999. The property had previously been used as the residence for the previous owners, and they used it to raise cattle, and had 50 pair that they brought in for calving.

16. The Petitioner testified that there were a total of two acres of the greater property in hay, and the property includes two paddocks. Mr. Jones indicated that he feeds hay to his livestock, and leases a pasture for use by a horse and colt for \$40.00 each.

17. Mr. Jones testified that he lived on the property in 1999 and was doing the same things during that time period. He indicated that his family actually moved in during April 1998. The fencing on the property was done in 2000. The house, trees, paddocks, irrigation pump, and shed were all present on the site when he moved in. He further indicated that he had two shares of irrigation rights, as well as natural drainage from the adjacent site.

18. The Petitioner requested, based on the submitted petition, that the property be reclassified as agricultural, and an appropriate valuation in accordance with this classification be applied to the subject.

19. Respondent's witness, Harry L. Percival, testified that he was the Deputy Assessor for Montrose County and was an Agricultural Appraiser for the county. The witness indicated that he was born and raised on a farm, and in fact lived across the street from the subject. He farmed with his father, and all of these factors provide him with an understanding of farms and farming.

20. Mr. Percival testified that the guidelines in the Assessors Reference Library, (ARL) were used to classify the subject property.

21. The witness testified that he first examined what the requirements were for agricultural use. The statutes say that a property must meet the definition of a farm or a ranch. The witness indicated that he examined Colorado Revised Statutes, specifically 39-1-102 (3.5), from which he understood that he must look at the primary uses a property is put to. If a property is being used to grow agricultural products or livestock, the assessor applies an agricultural classification.

22. With respect to the subject property, the witness testified that the primary use of the subject property is residential. Mr. Percival felt that it was inappropriate to merely look at surface uses.

23. Mr. Percival testified that for reasons of size, it is not economically feasible to operate the subject property as a farm. He felt a minimum size of at least 100 acres was required to economically operate a farm.

24. The witness testified that a 4¼-acre lot only allows someone to live in the country or have a country lifestyle, but it is not a working agricultural property as intended by law.

25. Mr. Percival testified that he felt that Mr. Jones paid the price for a residential lot, not the price for agricultural land.

26. The witness testified that show horses do not qualify; it is critical to examine leases to determine what kinds of leases are in place.

27. The witness testified that visual inspection is the method used to determine if the person is attempting to make a profit. He further indicated that if profit were the measure, only three or four farms would make a profit in western Colorado.

28. Mr. Percival testified that most residential properties outside of city limits are on septic systems. This does not mean that a property is agricultural. He further testified that there are other residential lots in this subdivision.

29. The witness testified that after the split of property was made, this property could not stand the test of being able to stand on its own. Adjacent land was maintained due to the fact that the adjacent land is big enough to support the agricultural uses.

30. Under cross-examination, the witness testified that there are other five-acre parcels that are classified as agricultural within Montrose County.

31. He admitted that there are no size requirements in the statute as they relate to farms and how big they must be and, additionally, a profit is not required. In response to questions from the Board, the Petitioner testified that no size requirements are included in statute.

32. Mr. Percival testified that the assessor had determined that only properties which are actually run as farms can qualify as an agricultural use. Based on this determination, the subject is best classified as a hobby farm, though he admitted that there was nothing in the statute to support this contention.

33. The witness testified that the times that he has been out to the subject property, including June 2000, he did notice that the one pasture was almost ready to cut. The witness clarified that what is grown is not alfalfa, rather it is grass hay. At the same time, he indicated that he did see perhaps one or two horses on the subject property.

34. In redirect testimony, the witness testified that the primary purpose of the agricultural operation should be to make a profit, and that it didn't matter if they are actually making a profit.

35. Respondent assigned a total actual value of \$84,420.00, with \$35,000.00 allocated to land, and \$49,420.00 allocated to improvements for tax year 2000.

CONCLUSIONS:

1. The Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified and valued for tax year 2000.

2. Based on the testimony and evidence presented, the Board was persuaded that the Petitioner has met the statutory requirements for agricultural designation, and has documented such agricultural activities to the Board's satisfaction. The Petitioner has demonstrated that any number of agricultural activities are ongoing on the subject property, notwithstanding the Respondent's declaration that such activities are not economically feasible.

3. The Board finds that C.R.S. 39-1-102 (3.5) defines a farm as a parcel of land which is used to provide a product that originates from the land's productivity for the primary purpose of obtaining a monetary profit. The statute does not require or address issues relating to property size or the degree of profitability and, in fact, an analysis of the magnitude or feasibility of the profitability of the subject property goes beyond the scope of both statute and the guidelines as presented by the Division of Property Taxation.

4. The Petitioner has complied with the requirement as set forth under statute and is, therefore, entitled to have an agricultural classification applied.

5. The Board concluded that the 2000 actual value of the subject property should be based on an agricultural classification and should be reduced accordingly.

ORDER:

The petition is granted, and the Respondent is ordered to reclassify the subject property as agricultural.

The Board retains jurisdiction in this matter until two weeks from the date of this decision, by which time the Respondent must notify the Board in writing as to the adjusted 2000 value with the above-mentioned changes. The Board will then issue a final order based on the adjusted value.

DATED and MAILED this 7th day of May, 2001.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Karl Von Burg
Karl Von Burg

Mark R. Linné
Mark R. Linné

This decision was put on the record

MAY 07 2001

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

Diane Von Dollen
Diane Von Dollen 37232.01



<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>RALPH K. & ANN L. JONES,</p> <p>v.</p> <p>Respondent:</p> <p>MONTROSE COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Ralph K. Jones Address: 61604 Falcon Road Montrose, CO 81401 Phone Number: (970) 323-5098 E-mail: Attorney Reg. No.:</p>	<p>Docket Number: 37232</p>
<p align="center">FINAL ORDER (On Retaining Jurisdiction)</p>	

THE BOARD OF ASSESSMENT APPEALS retained jurisdiction in this matter until two weeks from its May 7, 2001 Order, at which time the Respondent was to notify the Board in writing of the 2000 actual valuation of the subject property.

FINDINGS OF FACT:

1. On May 22, 2001 the Board received Respondent's adjusted value for the subject property.
2. The adjusted value for the subject property for the agricultural land is \$2,450.00, the agricultural improvements is \$49,420.00, for a total 2000 actual value of \$51,870.00.

ORDER:

Respondent is ordered to change the 2000 actual value of the subject property based on

an agricultural classification with \$2,450.00 allocated to land, and \$49,420.00 allocated to improvements, for a total of \$51,870.00.

The Montrose County Assessor is directed to change her records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 23rd day of May, 2001.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Karl Von Burg
Karl Von Burg

Mark R. Linné
Mark R. Linné

This decision was put on the record

MAY 23 2001

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

Diane Von Dollen
Diane Von Dollen

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