

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>RICHARD D. LUTHI,</p> <p>v.</p> <p>Respondent:</p> <p>FREMONT COUNTY BOARD OF EQUALIZATION.</p>	▲
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Richard D. Luthi Address: 4908 Womack The Colony, TX 75056 Phone Number: (972) 625-5522 E-mail: Attorney Reg. No.:</p>	<p>Docket Number: 37866</p>
<p>ORDER (On Retaining Jurisdiction)</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 27, 2001, Harry J. Fuller, Mark R. Linné, and Karen E. Hart presiding. Petitioner, Richard D. Luthi, appeared pro se. Respondent was represented by James W. Deatherage, County Assessor.

PROPERTY DESCRIPTION:

Subject property is described as follows:

E2NE4 NE4SE4 33-16-71 N2N2 S2NW4 SW4NE4 N2S2 (T3 8) 34-16-71 (Fremont County Schedule No. 40002430-R)

Petitioner is protesting the 2000 actual value and classification of the subject property: a 560-acre tract with a residential improvement.

ISSUES:

Petitioner:

Petitioner contends that the subject is agricultural land. Petitioner disputes the residential land classification and valuation.

Respondent:

Respondent contends that the subject does not qualify for an agricultural classification. They contend the land is properly classified and valued as residential land. They contend that a residential improvement was discovered on site and the improvement value was properly added to the tax roll.

FINDINGS OF FACT:

1. Petitioner's witness, Ms. Barbara Sue Luthi, wife of the owner, presented the appeal on behalf of Petitioner.

2. Petitioner did not present an indicated value for the subject property based on the market approach. She contends the subject is agricultural and the land ought to be valued accordingly.

3. Petitioner's witness gave a brief history of the subject from 1968 to the present. She chronicled the interactions of the Petitioner and certain governmental agencies. She described a fire that devastated the subject in 1995. There was no grass to lease in 1996. The Petitioner was advised that a 2- to 3-year period was necessary for the grass to renew. In 1997 a verbal agreement was entered into with a third-party lessee for 1997, 1998, and 1999. In mid-1998, the Petitioner began fencing and other improvements on site. This caused the lessee to remove his stock and effectively voided the lease. The lessee then refused to pay the lease fee. Petitioner testified that the fencing project began in mid 1998 and took the next two years to complete. After the improvements were completed, the former lessee refused to lease the subject land. In August 2000 an arrangement was made with a third party for a 3-year lease on the land.

4. Under cross-examination from the Board, the witness admitted the subject was not leased for agricultural purposes as of January 1, 2000, nor on January 1, 1999. She admitted that cattle last grazed on the subject in July of 1998.

5. Petitioner is requesting a 2000 actual value of \$35.00 per acre for the subject land. The residential improvement value is not a consideration in this case, but is subject to a subsequent Special Notice of Valuation.

6. Respondent's witness, Mr. Jim Deatherage, Fremont County Assessor, presented an indicated value of \$224,838.00 for the subject property based on the market approach.

7. Respondent's witness presented four comparable sales ranging in sales price from \$195,000.00 to \$799,000.00. No adjustments were made to the sales. All of the sales were improved properties.

8. The witness testified there was insufficient documentation to grant the agricultural classification for taxable year 2000.

9. Respondent assigned an actual value of \$400.00 per acre to the subject property for tax year 2000.

CONCLUSIONS:

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

2. The Board has carefully considered all admitted evidence and testimony and has determined the subject property should be returned to an agricultural classification. The Board concluded that no break in agricultural usage occurred.

3. The Board recognizes there was a verbal lease for calendar years 1997, 1998, and 1999, and that the lessee executed said lease by grazing his livestock on the subject property for calendar year 1997 and the first portion of 1998. Petitioners leased the property in good faith and rightfully expected a monetary gain, even though the lessee later refused to pay. The Board finds sufficient evidence to support Petitioner's claim that the property was grazed and used agriculturally for tax years 1997 and 1998 as defined in the statutes.

4. The Board further finds that the property was once again grazed and under lease for calendar year 2000.

5. The only relevant year in question is calendar year 1999, when livestock were not grazing the subject property. The Board was convinced that Petitioners continued with agricultural activities on the property for 1999. Testimony indicated that Petitioners built stock ponds and continued to erect fencing for two years after the beginning of the projects in mid-1998. Fencing is an essential part of a ranching operation and became necessary when the lessee refused to rent the subject property, requiring perimeter fencing in order to lease the property to someone else. It is a common ranching practice to allow a property to remain fallow while stock ponds are erected and reseeded, and fencing is being installed or replaced. Fencing of the subject property was not an easy task, as evidenced by Petitioners need to hire contractors to blast rock to erect portions of the fence. The period of time to complete the project is therefore considered reasonable. The Board considers this activity to be sufficient to qualify the property for an agricultural classification for tax year 1999.

6. The Board concluded that the 1999 actual value of the subject property should be based on a grazing land agricultural classification and should be reduced accordingly.

7. Furthermore, the Board wishes to clarify its position regarding the subject property improvement value. The Board determined that it lacked jurisdiction to address the improvements. Respondent's Notice of Determination acted upon in this case was issued on August 22, 2000, when the land was believed to be vacant. The Petitioners filed their appealed to the Board of Assessment Appeals on September 14, 2000. A subsequent Special Notice of Valuation was mailed to Petitioners on December 6, 2000, adding the omitted improvements. It is the Board's position that the improvement value as levied on the Special Notice of Valuation must be appealed through the abatement process.


ORDER:

Respondent is ordered to change the 1999 actual value of the subject property land based on a grazing land agricultural classification.

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 1999 value with the above-mentioned changes. The Board will then issue a final order based on the adjusted value.

DATED and MAILED this 20th day of April, 2001.

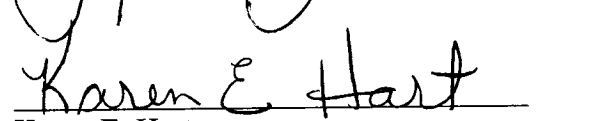
BOARD OF ASSESSMENT APPEALS



Harry J. Fuller



Mark R. Linné

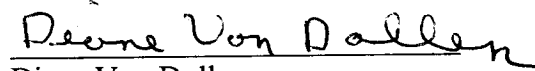


Karen E. Hart

This decision was put on the record

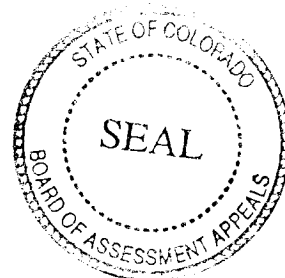
APR 20 2001

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



Diane Von Dollen

37866.01



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<p align="center">FINAL ORDER (On Retaining Jurisdiction)</p>	

THE BOARD OF ASSESSMENT APPEALS retained jurisdiction in this matter until two weeks from its April 20, 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 April 27, 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 \$7,067.00, the agricultural improvements is \$839.00, for a total 2000 actual value of \$7,906.00.
3. The Board corrects its April 20, 2001 Order in paragraphs 5 and 6 under **CONCLUSIONS**, and also under **ORDER** to reflect that the tax year is 2000.

ORDER:

Respondent is ordered to change the 2000 actual value of the subject property based on an agricultural classification with \$7,067.00 allocated to land, and \$839.00 allocated to improvements, for a total of \$7,906.00.

The Fremont County Assessor is directed to change his 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 7th day of May, 2001.

BOARD OF ASSESSMENT APPEALS

Mark R. Linné

Mark R. Linné

Karen E. Hart

Karen E. Hart

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

37866.forj

