

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>F. JONATHAN ZUSY,</p> <p>v.</p> <p>Respondent:</p> <p>ARCHULETA COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: F. Jonathan Zusy Address: 7415 Sargent Road Indianapolis, Indiana 46256 Phone Number: (317) 655-4555 E-mail: Attorney Reg. No.:</p>	<p>Docket Number: 37996</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 22, 2001, Debra A. Baumbach, J. Russell Shaw, and Karen E. Hart presiding. Petitioner appeared pro se. Respondent was represented by Mary Deganhart-Weiss, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**TRACT IN 1-35-2W #97007714 SHOWN AS PARCEL #4 ON
SURVEY #S218
(Archuleta County Schedule No. 569901100137)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2000. The subject property is described as a 35-acre tract of unimproved land, located in Elk Run Estates in Archuleta County, Colorado.

ISSUES:

Petitioner:

Petitioner contends that his property qualifies for agriculture on its own merits. He worked on fencing his property in calendar years 1998 and 1999, and executed a grazing lease in 2000 with a neighboring rancher. In addition, violations of law occurred with the notification process.

Respondent:

Respondent contends that there was no evidence of agricultural use of the subject property prior to 2000. There was no evidence of a conservation plan. The topography and terrain of the subject property are prohibitive to grazing. The property does not meet the definition of a farm or ranch. Due process was given to Petitioner.

FINDINGS OF FACT:

1. Mr. F. Jonathan Zusy, Petitioner, presented the appeal on his own behalf.
2. Mr. Zusy testified that he had received a 1998 agricultural questionnaire from the assessor at the same time as his tax bill; he later completed and returned the questionnaire, stating that the land was in conservation practices and that he was in the process of completing fencing of the property.
3. Mr. Zusy testified that he received a 1999 agricultural questionnaire, which he completed and returned, stating that the property was to be leased for horses and cattle in 1999 via an annual lease.
4. Mr. Zusy testified that he received a Notice of Valuation in May of 1999 that represented an agricultural land value. He assumed the classification was based on the agriculture questionnaire information that he had provided. He did not protest the \$4.00 increase in value.
5. Mr. Zusy testified that in January 2000, he received a notice with his tax bill stating that his 2000 property value would remain the same as 1999, unless he received a notice by May 1st. He received no notice.
6. Mr. Zusy testified that he received a letter from the assessor dated May 16, 2000, stating that they had not received his 2000 agricultural questionnaire. He had not received a questionnaire and, therefore, had not sent one to them. He completed the questionnaire that accompanied the letter and returned it to the assessor in June of 2000.

7. Mr. Zusy testified that he then received a Special Notice of Valuation dated July 18, 2000, notifying him that there was a change in value for his property from an agricultural valuation to market value, due to a classification change. He filed a protest and also enclosed a copy of a pasture lease entered into in August of 2000 with a neighboring rancher, Mr. Eoff. Mr. Eoff is able to use the subject property for his cattle grazing by opening gates located in the fence line.

8. Mr. Zusy received a response to his appeal from the assessor, which denied a return of his property to an agricultural classification. He then filed an abatement petition, as advised by the assessor. He received a letter from the assessor dated December 13, 2000, notifying him that the petition had been denied, based on the assessor's recommendation. He eventually received a hearing before the Archuleta Board of County Commissioners (BOCC), and subsequently received a notice denying his petition. Mr. Zusy then filed an appeal with the Colorado State Board of Assessment Appeals.

9. Mr. Zusy testified that he entered into a lease in 2000 with a neighboring rancher, with the intention to make a monetary profit. The rancher executed the lease by opening the gates and making the property available to his cattle. The subject property is associated with the rancher's parcel as part of an integrated whole or larger unit, being Mr. Eoff's ranching operation. The subject property is actually being used for grazing. He believes his land qualifies for an agricultural classification.

10. Mr. Zusy testified that prior to its development, his land had been used for cattle ranching. Once he became owner of the property, he put in a plan, which called to first fence the property. The next year he intended to do grazing, but he noticed some fence repairs needed done to the existing fences, which he did. He then leased the property in the third year.

11. Mr. Zusy testified that activities such as reseeding, building fences and roads, and other conservation activities allow an agricultural classification without actual use. His plan was submitted to the assessor for each of the three years. In the year 2000, he built a road so that he could later build a barn, stables, and a corral. He also amended the covenants to make it clear that all of the owners of the parcels in the development would be able to use their properties under the statutes for agricultural purposes.

12. Mr. Zusy is requesting a return to a classification of agriculture for tax year 2000, at the same value as the 1999 tax year. If the land is found to not qualify for agriculture, he then wants the BOCC determination overturned for procedural issues, including the improper use of the Special Notice of Valuation.

13. In cross-examination, Mr. Zusy admitted that there was no lease in effect for years 1998 and 1999. He saw cattle on his property. Mr. Eoff told him that he had opened the gate. He was last on his property in February of 2001; he visits the property once a year. He first spoke with Mr. Eoff in late 1999 or early 2000. He wanted to maintain his agricultural status. The majority of the fencing was done in 1998, with the building of the new fence line. The existing fence repairs were done in 1999. The property lease is for \$300.00 per year, but he reimbursed Mr. Eoff \$400.00 for repairs. He did not bring a copy of his check and he has no receipts. There is no water on the subject property, but there is water on Mr. Eoff's property.

Mr. Eoff has full rights to the subject property. Mr. Zusy admitted that he did not reseed the property, and he did not talk to the Extension Service about conservation practices. He feels his due process was denied, as he was not allowed a hearing before the County Board of Equalization, which would have allowed him to appeal to the District Court.

14. Upon questioning from the Board, Mr. Zusy testified that his Schedule 1040E reflects the rent and repairs on the subject property. He admitted that it also included rental property in Indiana. He also testified that he knows Mr. Eoff's cattle will enter the property, as he has previously seen them on his property by trespass. He testified that his fencing costs occurred in 1998 and 1999.

15. Mr. Zusy testified that he felt an incorrect procedure was used to change his property classification.

16. Petitioner is requesting a 2000 actual value of \$600.00 for the subject property, based on the 1999 agricultural land valuation.

17. Respondent's witness, Ms. Susan King, an Appraiser with the Archuleta County Assessor's Office, testified that she had reviewed Mr. Zusy's files and noticed he had reported the "intention" for agricultural use. She asked for a Schedule 1040F. She received a Schedule 1040E, which included rental property in Indiana. In addition, the area on the form used to show agricultural loss or income was blank.

18. Ms. King testified that on the 2000 agriculture questionnaire, she noticed the words "future lessee" and that Mr. Zusy was expecting to have improvements in place in 2001. There was no information regarding a lease on the questionnaire. In 2000, she did not have information showing the subject property was used. The Schedule 1040E showed no agriculture expenses and the assessor chose to removed the agricultural classification. They considered the classification to be erroneous.

19 Ms. King testified that a Special Notice of Valuation was sent, as it was past the normal time frame. They also sent a letter noting the reason for the change. Corrections may be made and notice sent at the time the error is discovered. They had not received the questionnaire in March, and the month of May was busy. She had requested the questionnaire a second time in May, received it in June, and sent the Special Notice of Valuation in July.

20. Ms. King testified that she received a response from Mr. Zusy in a letter dated August 21, 2000. She noticed that the enclosed lease was effective, entered into, and signed, all subsequent to the sending of the Special Notice of Valuation.

21. Ms. King testified that she had previously inspected Mr. Eoff's property, which is south and west of the subject property. In May of 2000, Mr. Eoff had protested the value of his outbuildings. She asked Mr. Eoff at that time what properties he was leasing, and he did not indicate that he leased Mr. Zusy's property. Because many people report they have leases and they do not, she verifies that the leases they have are current.

22. On August 28, 2000, Ms. King testified that she inspected the property. She showed the Board a video of the property taken in 2001. She testified that the property was in the same condition as in 2000. There are many trees and scrub oak located on the subject property; there is not much grazing area. The terrain is steep.

23. Ms. King testified that she has been on the property 3 times and has never seen cattle there. She does not believe the property qualifies for an agricultural classification. She could not see anything that would support grazing; there is no water or grass. She does not believe cattle would go onto the property. It is common for her to go onto properties to make inspections.

24. Under cross-examination, Ms. King testified that she told Mr. Zusy that they would be inspecting the property. She agreed that his land would support some cattle. She and the assessor made the video. The gate was closed, so she walked the south side of the subject property, but she did not see the gate opened by Mr. Eoff. She has observed the fences. The assessor has the right to correct errors.

25. In redirect, Ms. King testified that the grazing season is mid-May to mid-September. They are not obligated to remind owners to return their questionnaires. Once a property is classified as agriculture, it can still be changed later if it does not qualify under the law. There was no evidence of agricultural use, other than the lease. There are residences on some of the other lots in the development and some of the lots are classified as agriculture.

26. Upon questioning from the Board, Ms. King admitted that there was no minimum size requirement for agriculture classification, as well as no minimum number of cattle for grazing. She admitted that the subject property is capable of sustaining livestock. She reiterated that there was no income or loss from agricultural sources reported on Mr. Zusy's Schedule 1040E.

27. Respondent's witness, Ms. Keren Prior, the Archuleta County Assessor, testified that her duties include listing, classifying, and valuing properties for the tax roll, as well as correcting errors. 2000 was an intervening year. She can use Special Notices of Value for adding omitted properties and correcting classification errors.

28. Ms. Prior testified that Mr. Zusy's questionnaires always said "intent," but there must be actual use. She also noted that there was no Schedule 1040F, only a Schedule 1040E that showed no agricultural income. She followed the Division of Property Taxation (DPT) procedures as set in the guidelines for sending Special Notices of Value. They did not have time to check up on all agricultural properties, as Archuleta is a poor county. She believes, based on her 40 years of agricultural background, as well as being a realtor and an assessor, that Mr. Zusy "is not a farmer" and that the property does not qualify for an agricultural classification.

29. Under cross-examination, Ms. Prior admitted that the property had not been omitted from the tax rolls and that no one ordered her to send the Special Notice Of Valuation. She had spoken with Mr. Eoff in May of 2000 and he had not leased any other property. She admitted that for three years the property was classified as agricultural, but she believes that it was not in compliance for those years prior to 2000. There was no surface use evidenced. Even though the property is now under lease, she will not consider the year 2000 as qualified agricultural use.

30. Upon questioning from the Board, Ms. Prior admitted that she was not aware of anything in the DPT guidelines that specifically mentioned the use of the Special Notice Of Valuation for classification changes.

31. Respondent assigned an actual value of \$76,531.00 to the subject property for tax year 2000 based on a market value.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly 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. It was undisputed that the subject property had been agriculturally used prior to the platting of the development and Mr. Zusy's acquisition of the property in September of 1997.

4. There was no lease or grazing activity on the subject property in calendar years 1998 and 1999. However, the Board was convinced that Petitioner continued with agricultural activities on the property. Testimony indicated that Petitioner erected new fencing and repaired existing fencing during those first two years after acquisition. Fencing is an essential part of a ranching operation and became necessary when the property came under separate ownership. Perimeter fencing would be necessary in order to separately lease the property from the balance of the development. The Board considers this fencing activity to be sufficient to qualify the property for an agricultural classification for tax years 1998 and 1999.

5. The Board further finds that for calendar year 2000 the property was under an executed lease by a neighboring rancher, who opened the gates to allow grazing by his cattle. Thus, the subject parcel was a part of a larger ranching operation, and therefore qualifies for an agricultural classification for calendar year 2000.

6. The Board determined that the subject property met the definition of a ranch for the previous two years and the current year, as defined in C.R.S. 39-1-102(1.6)(a)(I). The Board concluded that the 2000 actual value of the subject property should be based on an agricultural grazing land classification and should be reduced to \$600.00, allocated to land.

7. Furthermore, the Board was not convinced that a Special Notice of Valuation issued after May 1st of each year can execute a change of classification from agriculture. C.R.S. 39-5-125 allows for and defines additions of omitted property to and corrections of errors in the assessment roll. The subject property was not omitted from the tax roll, and the Board does not believe an agricultural change in classification meets the definition of an error under this statute.

8. C.R.S. 39-1-105-3(5)(c) states, "Once any property is classified for property tax purposes, it shall remain so classified until such time as its actual use changes or the assessor discovers that the classification is erroneous." It goes on to state "Subject to the availability of funds under the assessor's budget for such purpose, no later than May 1 of each year, the assessor shall inform each person whose property has been reclassified from agricultural land to any other classification of property of the reasons for such reclassification including, but not limited to, the basis for the determination that the actual use of the property has changed or that the classification of such property is erroneous." The assessor did not notify the Petitioner of a change in classification until July 18, 2000, well after the May 1 deadline. Therefore, the Board concluded that the assessor would need to wait until the following year before a change in classification could be executed.

9. Additionally, Petitioner felt that he had not been given the opportunity to develop a full record, due to unfair time restraints. The Board wishes to note that the time for hearing is set by Petitioner. Petitioner had ample time, prior to the setting of the hearing date and time, to amend his original time request. The Board also wishes to note that even though a request by Petitioner to extend the hearing was denied at the beginning of the proceeding, Petitioner was still allowed nearly twice his scheduled time to present his case.

10. Finally, Petitioner's request for reimbursement of attorney fees and costs is denied.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2000 actual value for the subject property of \$600.00, classified as agricultural land.

The Archuleta 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 the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 3rd day of August, 2001.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach.

Debra A. Baumbach

J. Russell Shaw

J. Russell Shaw

Karen E. Hart

Karen E. Hart

This decision was put on the record

AUG 03 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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