

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>BEN VELDKAMP,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Ronald C. Sandstrom Address: 11540 West 69th Way Arvada, Colorado 80004 Phone Number: (303) 424-0683</p>	<p>Docket Number: 40147</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 28, 2003, Karen E. Hart and Rebecca A. Hawkins presiding. Petitioner was represented by Ronald C. Sandstrom, F&S Tax Consultants; Respondent was represented by Martin E. McKinney Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Lot 1, Key A of Montgomery Acres Subdivision
(Jefferson County Schedule No. 012522)**

Petitioner is requesting an abatement of taxes on the subject property for tax years 1999 and 2000 based on a change from vacant land to agricultural classification. The subject property is a parcel consisting of approximately 2.831 acres.

ISSUES:

Petitioner:

Petitioner contends that the subject parcel has been used for grazing and meets the qualifications for agricultural classification.

Respondent:

Respondent contends insufficient evidence of agricultural use exists to change the classification from vacant land to agricultural.

FINDINGS OF FACT:

1. Mr. Ronald Sandstrom, F&S Tax Consultants, presented the appeal on behalf of the Petitioner.

2. Mr. Sandstrom did not present a market approach. Based on an agricultural valuation of \$40.00 per acre, Petitioner's witness presented an indicated value of \$113.00 for the subject property.

3. Mr. Sandstrom presented 1999 Agricultural Land Values in Jefferson County. He suggested the subject be classified in accordance with tax class 4141 as Grazing VI land, with a \$40.00 value per acre.

4. Mr. Sandstrom presented Monthly Rental Income Records for 1994, 1995, 1996, 1997 and 1998. The records show income generated for the owner from the subject property of \$150.00 per month for most months during this time period.

5. Mr. Sandstrom referenced pages 17 and 18 of Petitioner's Exhibit A, which are two letters from Cynthia M. Langley. Ms. Langley is the tenant of the subject property. These letters state she leased the subject property from 1993 through 2000, through an oral lease. Ms. Langley used the parcel to pasture and house excess horses. Mr. Sandstrom testified that he could not get written documentation from Cynthia Langley regarding her business operation and whether the horses located on the subject property were qualifying livestock according to the Colorado Revised Statutes definition.

6. Mr. Sandstrom testified to visiting the subject property. During those visits he talked with the tenant regarding the use of the property and observed the lack of vegetation. He testified to seeing horses feeding on supplemental hay.

7. Mr. Sandstrom testified that he did not take photos during an inspection in 1999, but took photos in September 2000. Prior to September 2000 the horses had been removed from the subject site. He testified to seeing signs of vegetation in September 2000, due to the removal of the horses.

8. Under cross examination Mr. Sandstrom testified that the owner, Mr. Veldkamp, does not actually engage in farming, and the rent is not tied to profits from agricultural pursuits on the subject property.

9. Petitioner is requesting a 1999 and 2000 actual value of \$113.00 for the subject property, based on an agricultural classification.

10. Respondent's witness, Mr. David Niles, a Certified General Appraiser for the Jefferson County Assessor's Office, testified to visiting the subject property twice. He did not see evidence of grazing on either visit.

11. Mr. Niles testified that the property classification is vacant land and has been vacant land for the preceding ten years. He testified Jefferson County relies on property owners to provide proof of agricultural use. Nothing was provided to him regarding a for-profit agricultural operation.

12. Mr. Niles testified that no evidence was provided that support the subject property being used as part of a larger operation, known as Fin Terre Ranch. No evidence was provided as to the type of horses kept, or the use of those horses on either parcel. He testified that Fin Terra Ranch is for profit; they board horses and operate other properties in the area.

13. Mr. Niles testified that the only information presented was a monthly rental income statement from Mr. Veldkamp for 1995, 1996 and 1997. Petitioner's Exhibit A includes the letters from the tenant. On page 17 it states; "no animals housed on the subject property were used for human consumption, breeding, draft or profit".

14. Mr. Niles testified to a lack of agricultural documentation regarding the use of the land for the years 1997, 1998 and 1999. Mr. Niles testified the land does not qualify for an agricultural classification.

15. Respondent assigned an actual value of \$121,700.00 to the subject property for tax years 1999 and 2000.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove a vacant land classification on the subject property for tax years 1999 and 2000 was correct.

2. The Board reviewed two letters from Ms. Langley, pages 16 and 17 of Petitioner's Exhibit A. The letter on page 16 states the tenant used the subject property for pasturing and housing their horses. Colorado Statute includes the word "grazing" not "pasturing" when it refers to keeping livestock. The Board agrees with the Petitioner that

supplemental hay was necessary to feed the horses; the submitted photos clearly showed a lack of vegetation.

3. The Board was not convinced the subject site could produce sufficient vegetation to graze livestock. Ms. Langley was not present to testify or be cross-examined. Based on direct testimony of Mr. Sandstrom, the Board could not determine what type of operation occurred on the subject site. It is the use of the animals that is most important.

4. The Board could not determine the type of horses kept or use of those horses on the subject site. Page 17 of Petitioner's Exhibit A, states the horses were privately owned and no outside board was ever collected. It also states; "although Fin Terra Ranch is a breeding facility, no breeding, foaling or sales were ever done on Mr. Veldkamp's property".

5. The Board was not convinced horses were kept for profit on the subject property. While it is possible the subject was used in conjunction with the larger Fin Terra Ranch to the north, the Board could not determine if an agricultural operation existed on that property.

6. The Board agrees the rental income provides the owner with a monetary profit. However, animals not used as food for human or animal consumption, breeding, draft or profit do not meet the criteria to re-classify the subject property to agricultural, regardless of the owner making a profit from the grazing of the horses. No agricultural products originate from the land's productivity for the primary purpose of making a profit.

7. The Board agrees with Respondent that Petitioner did not meet the burden of proof to establish entitlement to agricultural classification as stated in the Colorado statutes. Land must meet the statutory definition in order to be classified as agricultural and valued based on its earning capacity.

8. After careful consideration of all the testimony and evidence presented, the Board concluded that the 1999 and 2000 classification of the subject property should be vacant land and affirms the assigned value of \$121,700.00.

ORDER:

The petition is denied.

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 25th day of March, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Rebecca Hawkins

Rebecca A. Hawkins

This decision was put on the record

MAR 24 2003

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

Penny S. Lowenthal
Penny S. Lowenthal

