

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>PHILLIP ANDREW AND KATHLEEN CARMEN WOLF,</p> <p>v.</p> <p>Respondent:</p> <p>GILPIN COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Phillip Andrew Wolf Address: P.O. Box 16804 Golden, Colorado 80401 Phone Number: (303) 215-9995</p>	<p>Docket Number: 41117</p>
<p align="center">ORDER (On Retaining Jurisdiction)</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 23, 2003, Karen E. Hart and Steffen A. Brown presiding. Petitioners appeared pro se. Respondent was represented by James J. Petrock, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Gilpin County Schedule Nos. R000322, R000323, R000324, R003099

Petitioners are contesting the 2000 and 2001 vacant land classification of the subject property, an 867.53-acre parcel of land located in the Elk Meadows area, Gilpin County.

ISSUES:

Petitioners:

Petitioners contend that the subject property should be classified as agricultural land and that Gilpin County has incorrectly classified the subject property as vacant land.

Respondent:

Respondent contends that there is no evidence that the subject property is a for-profit ranch and that the subject has been correctly classified as vacant land.

FINDINGS OF FACT:

1. Mr. Phillip A. Wolf, Petitioner, presented the appeal on behalf of Petitioners.
2. Mr. Wolf testified that the subject property is not a ranch, but that it is agricultural land and has been grazed since before it was purchased by Petitioners. Mr. Wolf further testified that every other property around the subject is classified as agricultural land.
3. Referring to Petitioner's Exhibit A, Mr. Wolf testified that his son-in-law put cattle on the property. Petitioner's Exhibit A, titled "General Agreement," is dated November 1998 and includes renewals for years 1999 through 2001. The agreement makes the land available for grazing. Mr. Wolf stated that his interpretation of C.R.S. 39-2-101 does not indicate that profit is necessary in order to satisfy the requirements of an agricultural classification.
4. In cross-examination, Mr. Wolf testified that the General Agreement for grazing includes the entire 867 acres, which is all fenced except for areas of natural rock formations or where the snow and animals have knocked it down. He has no documentation regarding compensation received for grazing under the General Agreement and he did not provide Gilpin County with any documentation because profit is not a requirement for an agricultural classification. Mr. Wolf further testified that the 1972 water right known as "The Spring" has junior water rights for livestock use and is located in the vicinity of the original cabin. Other water sources include Cottonwood Creek and another unnamed creek. Mr. Wolf stated that there is trespass grazing from neighboring land.
5. Upon questions from the Board, Mr. Wolf testified that the compensation he received was \$10.00 per cow. There were five cows and one bull on the property in the winter. Grasses usually begin to grow in May or June and last through August or September, but he has had livestock on the property year-round since 2000.
6. Petitioner is requesting that the subject property be re-classified from vacant land to agricultural.

7. Respondent's witness, Ms. Glenda Allen, Gilpin County Assessor, described the subject as being located in the southwest part of Gilpin County, east of Highway 119. Ms. Allen testified that the portion of the property she could see from Highway 119 was very rocky and steep. She has never seen cattle on the subject property, but she has not seen the top of the property since Petitioners purchased it. She inspected the property before it was purchased by Petitioners and testified that she did not see cattle on the property at that time. .

8. Ms. Allen testified that, prior to the Wolf purchase, the land had been in conservancy. Referring to a letter in Respondent's Exhibit 1, page 1, the previous owners said that they wanted a two-year conservation hiatus as of April 1996 due to overgrazing. The agricultural classification changed when the land transferred to Petitioners in December 1998.

9. Mr. Wolf protested the change in classification in 1999. Ms. Allen testified that the Gilpin County Assessor's Office had sent a questionnaire to Petitioners requesting a notarized lease, and a copy of the IRS 1040, Schedule F. Petitioners did not provide this information to Respondent in 1999, but did remit their 2000 Schedule F to Respondent, which shows the income derived from the land lease. (Reference Respondent's Exhibit 1, page 24).

10. Ms. Allen testified that she talked to Mr. Wolf's son-in-law at the end of February 2001, who indicated that there were about 40 head of cattle on the property. As to surrounding properties, Ms. Allen testified that not all of them were classified agricultural.

11. In cross-examination, Ms. Allen testified that the last time she was on the subject property was about a year ago. The witness estimated that she had seen about 20% of the property from Highway 119. Regarding the lease between Petitioners and their son-in-law, Ms. Allen felt that it was not an arms-length transaction.

12. Upon questions from the Board, Ms. Allen testified that the county requires documentation each year from property owners to substantiate agricultural classification. In addition, someone from the assessor's office goes out to inspect the properties. She was aware of the two-year conservation agreement shown in Respondent's Exhibit 1, page 1.

13. Respondent assigned a vacant land classification and assessment rate to the subject property for tax years 2000 and 2001.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified for tax years 2000 and 2001.

2. The Board is convinced that the General Agreement dated November 1998, and the subsequent renewals, are valid regardless of the relationship between the parties. The Agreement

clearly states that the land is available for grazing and defines grazing periods as well as compensation. The Board is also convinced that the Agreement was executed, compensation was received, and livestock have been grazing the subject property.

3. Respondent's witness testified that she did not see livestock on the property prior to the Wolf's purchase, which may have been due to the 1996 conservancy request. As to the subsequent inspection, the Board is not convinced that only seeing 10% to 20% of steep terrain from the highway is adequate to determine if livestock are grazing the land, particularly considering the overall size of the property.

4. Respondent changed the property's classification after the sale to Petitioners in 1999. Based on the evidence and testimony presented, the Board believes that the change was made solely due to the sale of the property and that an adequate investigation as to whether the subject property was actually being grazed was not conducted.

5. After careful consideration of all of the testimony and evidence presented, the Board concluded that the 2000 and 2001 classification of the subject property should be agricultural, with the agricultural assessment rate applied.

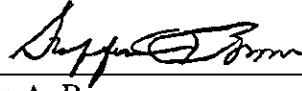
ORDER:

Respondent is ordered to reduce the 2000 and 2001 actual value of the subject property based on an agricultural classification.

The Board retains jurisdiction in this matter for two weeks from the date of this decision, by which time the Respondent must notify the Board in writing as to the adjusted value for the subject property for tax years 2000 and 2001. The Board will then issue a final order based on the adjusted value.

DATED and MAILED this 5th day of November, 2003.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown

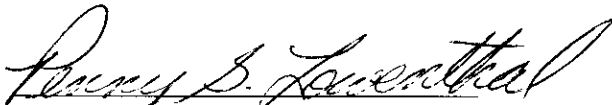


Karen E. Hart

This decision was put on the record

NOV 05 2003

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


Penny S. Lowenthal