

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Petitioners:

JESSE B. AND MARGARET C. AVILA,

v.

Respondent:

DOUGLAS COUNTY BOARD OF EQUALIZATION.

Attorney or Party Without Attorney for the Petitioners:

Name: Jesse B. Avila
Address: 7910 Greenland Road
Franktown, Colorado 80116
Phone Number: (303) 663-0399
E-mail: PJBAVILA@aol.com

Docket Number: 42469

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on December 13, 2004, Karen E. Hart, Diane M. DeVries, and Judge Nuechter presiding. Petitioners appeared pro se. Respondent was represented by Ms. Michelle B. Gombas, Esq. Petitioners are protesting the 2003 classification of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**7910 Greenland Road, Franktown, Colorado
(Douglas County Schedule No. R0217517)**

Petitioners are protesting the 2003 classification of the subject property, a residential dwelling on a 35-acre site located at 7910 Greenland Road, Franktown, Colorado and used to breed and sell cockatiel birds.

ISSUES:

Petitioners:

Petitioners contend the Respondent improperly ignored the agricultural use of the subject property and assigned a residential classification to the property. The Petitioners raise cockatiel birds for profit in the basement of the house located on the property.

Respondent:

Respondent contends that the subject property is residential. This appeal centers on the classification of the property. The legislative intent for agricultural classification is to maintain affordable food prices in the State of Colorado and therefore the property does not qualify for agricultural classification.

FINDINGS OF FACT:

1. Mr. Jesse Avila, Petitioner, presented the appeal on behalf of the Petitioners.
2. The Petitioners and the Respondent have agreed that classification of the subject property is the issue at this hearing and the correct value of the property will be established when the classification is determined by this Board.
3. Mr. Avila testified that animal husbandry is allowed by Colorado State Statutes and that it does not define the use of specific livestock. He believes that any animal can meet the state's qualifications. The cockatiels eat seed grown on the land and therefore their property should be classified as agricultural.
4. During cross-examination, Mr. Avila testified that their property is a farm. He did not present evidence to the Board that sunflowers or millet are actually grown and harvested on their property, which is 35 acres in size. The Petitioners indicated that they irrigate up to an acre and have planted millet in that area in the past. The remaining 34 acres are planted in native grass and trees. In 2002, the land was untouched except for volunteer sunflowers and millet seed on one acre of irrigated land. There were approximately 300-400 sunflower plants in 2002. The Petitioners did not provide receipts for sales of their birds. The Petitioners did not file an IRS Schedule F during the base period.
5. Mr. Avila testified that the birds eat seed and fresh vegetables. The primary seeds are millet, sunflowers, and corn. He buys 90% of his seed from Excello, a wholesale seed company; 10% comes from his property.

6. During questions from the Board, Mr. Avila testified that they physically harvest the various seeds on their land for the birds. They do this by cutting the plants with a weed whacker, cutting the seed heads with a pair of scissors and feeding the seeds to the birds. He believes the sunflowers were seeded by birds flying overhead since a neighbor had sunflower plants. The millet was originally purchased as feed for the birds. Mr. Avila broadcasted the seed by hand and it was not tilled or fertilized. Petitioners started breeding their birds in 1990. They moved to Colorado in 1997 and were required to band the birds and obtain a license for breeding purposes. The Pet Animal Care Facilities Act License was issued by the Colorado Department of Agriculture. They had 20 birds during the base period. The Avilas irrigate one acre with a hose from a domestic well. They have tried to sell the native grass as hay on the remaining 34 acres by advertising in a newspaper, but could not find a buyer. There have been no cattle grazing on this land for the seven years the Petitioners have owned the property.

7. The Petitioners testified that they have a 12 x 20 foot room in the basement set up as an aviary. It is heated and ventilated with 15-20 cages that house the birds at night. The nursery is 8 x 12 feet and is a separate room in the basement. The cockatiel parents maintain their babies for 1 to 2 weeks after hatching naturally and then the Avilas hand feed the babies on the main level of their home. The Petitioners indicated that they sell some of the birds for \$75.00 to \$150.00 to pet stores. Show birds generally sell for \$150.00 to \$500.00 and they would like to raise more show birds in the future. They sell five to twelve birds per year and have no receipts for these sales.

8. Under recross-examination, the Petitioners testified that they indicated on a questionnaire sent by the Respondent that no income was derived from the property on January 12, 2000. They did not represent their birds as livestock at that time but have since determined that the birds should qualify as livestock and therefore the classification of their property should be changed to agricultural.

9. Based on additional questions from the Board, Mr. Avila testified that the classification of agriculture indicates that ranching is raising and breeding of livestock and a farm is the tilling and use of the land. He is requesting an urban definition of farming. Cockatiels are common birds and not exotic birds based on the classification by the USDA. Mr. Avila testified that cockatiels do not graze.

10. Petitioners are requesting that the subject property be classified agricultural for tax year 2003.

11. Respondent's witness, Mr. Larry Shouse, a Certified General Appraiser with the Douglas County Assessor's Office, presented the subject property as a residential property.

12. The Respondent's witness testified that the subject property is residential improved property based on the Colorado Division of Property Tax guidelines. The subject property did not appear to be used for agricultural purposes for the prior two years before the base period as indicated by the questionnaire the Douglas County Assessor's office sent to the Petitioners. It was indicated that a tree farm would be started in 2000, but that did not happen. There has been no evidence of farming or ranching activity and the Respondent's witness has not seen receipts for the sale of birds,

nor has he seen invoices for the purchase of seed. Supporting evidence from the Petitioners must be given to the Respondent in order to show agricultural use, as well as an application for agricultural classification.

13. The Respondent's witness testified that the definition of a ranch as defined in Colorado Revised Statutes 39-1-102 (13.5) means a parcel of land used for grazing livestock for the primary purpose of obtaining a monetary profit and livestock means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit. He believes the cockatiels would need to graze by utilizing the resources of the property in order for the property to be classified as a ranch or a farm. The Petitioners have not provided documentation that they received a monetary profit from the sale of the birds or that the birds grazed on the land in order to allow the agricultural classification.

14. Respondent assigned a residential classification to the subject property for tax year 2003.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified for tax year 2003.

2. The Board was not presented any documentation by Petitioners that supported their claim that the subject property was an ongoing ranch or farm that qualified for agricultural classification.

3. The Board agrees with the Respondent that the subject property cannot be classified as a ranch since there was no indication of grazing on the property during the base period or during the prior two years. The subject property cannot be a farm since there was no evidence of planting, tilling, fertilizing or harvesting of agricultural crops on the property. Petitioners' hand broadcasting of seed purchased for bird consumption and volunteer sunflower plants growing in a one-acre area irrigated by a garden hose from a domestic well does not represent farming practices. Even if the Board were to accept Petitioners' activities as farming, one acre would not qualify the entire 35 acres for an agricultural classification. The Board also does not believe that the breeding of pet birds contributes to affordable food prices for the State of Colorado as these birds are pets, not animals used for human or animal consumption.

4. The Petitioners argued that Morning Fresh Farms, which is a poultry operation and classified as agricultural, has similar use as their property. The Board disagrees. Chickens are considered food animals. Cockatiels are considered pets. Additionally, Morning Fresh Farms is part of a larger 800-acre farming operation where there is productivity from the land that contributes to the 40-acre poultry operation.

5. Based on Colorado Revised Statutes 39-1-102 (1.6), the Board does not believe that the Petitioners were able to provide sufficient evidence that their pet breeding operation should

qualify as a ranch or as a farm in order to obtain agricultural classification for ad valorem tax purposes in 2003.

ORDER:

The petition is denied.

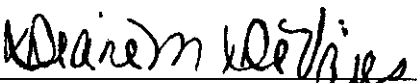
APPEAL:

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


If 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 27th day of January 2005.

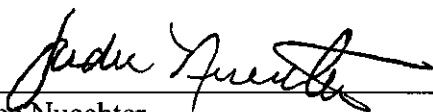
BOARD OF ASSESSMENT APPEALS



Diane M. DeVries



Karen E. Hart

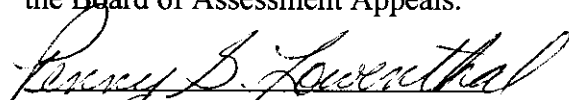


Judee Nuechter

This decision was put on the record

JAN 26 2005

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



Penny S. Lowenthal

