

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket Number: 45199

Petitioner:

CHUCK RESTIVO,

v.

Respondent:

PITKIN COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on April 25, 2006, Diane M. DeVries and Karen E. Hart presiding. Petitioner appeared pro se. Respondent was represented by Christopher G. Seldin, Esq. Petitioner is protesting the 2005 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Pitkin County Schedule No. R007227

The subject property consists of a 38.84-acre parcel of vacant land.

FINDINGS OF FACT:

1. Petitioner has an apiary operation with beehives located in Garfield, Eagle and Pitkin Counties. Mr. Restivo testified that he placed eight hives on the subject property in 2003, 16 hives in 2004, and 32 hives in 2005. Mr. Restivo's neighbor, Mr. David Bork, confirmed that Petitioner placed beehives on the subject property in the summer of 2004. Mr. Bork did not see hives on the subject property prior to 2004. Mr. Larry Fite, Chief Appraiser of the Pitkin County Assessor's Office, also testified that he had not seen beehives on the subject property prior to 2004.

2. In 2003 and 2004, Mr. Restivo focused on building up the number of bees rather than harvesting honey. Petitioner sold some beeswax and honey in 2004. In 2005, Petitioner sold honey and beeswax, and leased hives for pollination. Mr. Restivo submitted records for bee expenses beginning July 8, 2004. There are no financial records for any sales prior to 2005, as his former partner has those records.

3. Mr. Fite located the subject property boundaries using an aerial map and a handheld

GPS device. According to his findings, the beehives are actually located on BLM land and not the subject property. Petitioner asserts that the hives are located well within the subject property lines and does not believe that handheld GPS locators are always precise. Only a land survey could determine with certainty the exact location of the hives. Petitioner placed the hives on what he believes to be a portion of the subject property and the Board accepts that the bees are associated with the subject property.

4. Petitioner submitted a lease with Sarah McNulty for cattle grazing. Ms. McNulty testified that she brings from four to nine older cows to the subject property in early May of each year for a short period of time, corralling them on approximately 15 acres of the subject property with an electric fence. Ms. McNulty has not paid Petitioner for the cattle grazing in recent years.

5. Mr. Bork has an access easement through the subject property, which is contiguous to his property. Mr. Bork has not seen any watering of cattle, salt blocks, or electrical fencing at the subject property. He has seen cattle on the property but believes they belong to Mr. John Nieslanik, a rancher in the Roaring Fork valley who has a grazing permit for BLM land located west and south of Mr. Bork's house. Mr. Nieslanik puts cattle in on the 16th of May and removes them on the 24th of June each year. Neither Mr. Bork nor Mr. Nieslanik has any knowledge of any other cattle in the area. Mr. Fite inspected the subject property on eight occasions from June 1, 2002 through October 28, 2005 and did not see any evidence of cattle grazing, watering, salt blocks, or fencing.

6. The classification of the subject property was changed from agricultural to vacant land in 2005.

7. Petitioner is requesting an agricultural classification for the subject property for tax year 2005.

8. Respondent assigned an actual value of \$480,000.00 to the subject property for tax year 2005.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly classified and valued for tax year 2005.

2. To qualify for an agricultural classification, a property must have been used agriculturally during the tax year at issue, as well as for the previous two years. In this instance, the applicable years for agricultural use are 2003, 2004 and 2005.

3. Conflicting testimony and evidence was presented regarding the use of the subject property in 2003. Petitioner testified that he placed beehives on the subject property in 2003, but Respondent presented two witnesses who did not see hives on the property that year. Petitioner presented no evidence of income or expenses for tax year 2003. The subject property does not qualify for an agriculture classification insofar as the apiary activities are concerned for tax year 2003.

4. Conflicting testimony and evidence was presented regarding cattle grazing activities on the subject property. Although Mr. Restivo and Ms. McNulty entered into a perpetual lease on

4. Conflicting testimony and evidence was presented regarding cattle grazing activities on the subject property. Although Mr. Restivo and Ms. McNulty entered into a perpetual lease on January 10, 2000, the question is whether the lease has been and continues to be executed. Ms. McNulty testified that she placed cattle on the property; however, three Respondent witnesses testified that they had not seen Ms. McNulty's cattle or any evidence of the presence of her cattle on the subject property during any of the three tax years in question. Petitioner admitted that no monetary exchange with Ms. McNulty had occurred in recent years, though there is one receipt for payment of pasture rent dated February 2, 2004 (Respondent's Exhibit D). The subject property does not qualify for an agricultural classification under grazing activities.

5. The Board concluded that the subject property was not used as a farm or ranch during all three tax years in question as required by 39-1-102 (1.6)(a).

ORDER:

The petition is denied.

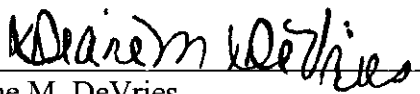
APPEAL:

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 21st day of June 2006.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries



Karen E. Hart

This decision was put on the record

JUN 21 2006

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


Penny S. Lowenthal
45199

