

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>KENNETH R. & KATHLEEN M. EVANS,</p> <p>v.</p> <p>Respondent:</p> <p>MONTEZUMA COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 46418</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 21, 2006, Debra Baumbach and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by Robert Slough. Petitioner is protesting the 2005 classification and actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**27038 State Highway 145, Delores, Colorado
Montezuma County Schedule No. 5331-063-01-001**

The subject property is a 1,778 square foot residence built in 1989 on a 3.84-acre parcel in the Delores River Valley. The property is bordered on the north by Highway 145 and on the south by the San Juan Forest. The Dolores River intersects the 3.84-acre parcel.

FINDINGS OF FACT:

1. The subject property was part of an 11.7-acre parcel that had been used for the production of hay and grazing cattle. The property has not been used for cattle grazing since the 1990s. In 1997, the 11.7-acre parcel was subdivided into three separate parcels, one of which is the subject of this appeal.

2. Tim Howe leases the northernmost 1.62 acres for pasturing two horses. The area is fenced except where the riverbank and rocky area act as a natural barrier. Deeded water rights allow watering of two horses. Mr. Howe, who has a contract with the U.S. Forest Service to provide noxious weed control, uses the horses to transport him and spraying equipment to mountainous areas that are otherwise inaccessible.

3. Mr. Howe signed an affidavit attesting to a verbal pasture lease from 2001 through 2004. Mr. Howe and Petitioner entered into a written lease on May 15, 2004. Non-monetary payment to the Petitioner includes purchase and application of fertilizer, construction and repair of fencing, and installation of a culvert.

4. C.R.S. 39-1-102(13.5) defines "Ranch" as "a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit." "Livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft or profit." Petitioner contends that the subject property qualifies for agricultural classification because Mr. Howe's horses are draft animals used for profit.

5. Petitioner presented seven improved comparable sales ranging in sales price from \$240,000.00 to \$317,000.00, in improvement size from 690 to 3,030 square feet, and in lot size from 1.18 acre to 13.05 acres. After adjustments for time, acreage, size, heat, bathroom count, garages, and a guest house, the sales ranged from \$187,000.00 to \$408,830.00. The average of the seven comparable sales, after adjustments, was \$311,000.00. Petitioner subtracted the subject's assigned land value of \$135,000.00 to conclude to an indicated value of \$176,000.00 for the subject improvement. Petitioner's adjustments for acreage were not substantiated and averaging prices of comparable sales is not consistent with standard appraisal practice.

6. Petitioner also presented an indicated improvement value of \$182,644.00 based on the value assigned to the subject improvement.

7. Petitioner is requesting an agricultural land classification and value of \$550.00, and a residential improvement value of \$182,644.00 for a total of \$183,194.00.

8. Respondent presented three comparable sales ranging in sales price from \$285,000.00 to \$317,000.00, in improvement size from 690 to 1,652 square feet, and in lot size from 1.18 acres to 5 acres. After adjustments were made for time, size, heat, and garages, the sales ranged from \$342,480.00 to \$372,830.00. No adjustments were made for differences in lot sizes, as Respondent uses a buildable site unit of comparison. Respondent placed most weight on Sale 3 due to its similarity in size and proximity to the river to conclude to an indicated value of \$344,000.00 for the subject property.

9. Respondent classified the subject property as residential and assigned an actual value \$317,640.00 for tax year 2005.

CONCLUSIONS OF LAW:

1. Petitioner received a Special Notice of Valuation in October 2005 reclassifying the subject property from agricultural to residential. Petitioner contends that classification cannot be changed after May 1, 2005. Respondent argues that the delay was caused by budget constraints. We do not find that Respondent violated the provisions of C.R.S. 39-1-103(5)(c) which states in pertinent part:

“**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 classified 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” (*emphasis added*).

2. The subject property does not qualify for agricultural classification. Although 12% of the subject property is irrigated pasture land, no profitability is directly attributable to the use of that land. The remuneration Mr. Howe receives from the U.S. Forest Service to control noxious weeds on U.S. Forest Service land does not satisfy the requirements or intent of C.R.S. 39-1-102(13.5).

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

ORDER:

The appeal 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 14th day of October 2006.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

MaryKay Kelley

MaryKay Kelley

This decision was put on the record

OCT 13 2006

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

