

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DAVID A. BROWN,</p> <p>v.</p> <p>Respondent:</p> <p>PITKIN COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 58503</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 3, 2012, Diane M. DeVries and Amy J. Williams presiding. Petitioner was represented by Mr. Gregory S. Gordon, Esq. Respondent was represented by Ms. Michelle B. Whisler, Esq. Petitioner is protesting the 2011 property tax classification of the subject property.

Subject property is described as follows:

**A Parcel of Land in E2of Section 36, T8N, R87W
AKA Sopris Creek, Lot 12,
Basalt, Colorado 81621
Pitkin County Schedule No. R007201**

The subject property consists of 55.003 acres of land located near the Town of Basalt, in unincorporated Pitkin County, improved with a garage/shop building.

Petitioner is requesting a change in classification from vacant land to agricultural land. The parties stipulated to the subject’s value of \$400,000 based upon a vacant land classification for tax year 2011.

Petitioner, Mr. David Brown, the owner of the subject property, testified that in the fall of 2007 he purchased 350 six inch tall trees. These trees were planted and initially irrigated with a gravity fed irrigation system; said system now upgraded to an automated, timed irrigation system. Irrigation water is from a well located near the garage/shop building. Mr. Brown presented several receipts from 2007 through 2012 relative to expenses of his tree growing operation as well as several

invoices related to the sale of trees. Mr. Brown also presented documents and testified regarding Internal Revenue Service Schedule F forms filed with his personal income tax returns. Mr. Brown stated that he did intend to make a profit from his tree growing operation. Mr. Brown testified that small trees are initially planted in a raised bed created from soil mixed with compost. When the trees have reached sufficient size they are then transferred to nearby land outside of the raised bed. The area used for tree planting purposes is enclosed within an eight foot high wire mesh fence to protect the trees from wildlife. Per Mr. Brown's testimony and a letter from Kevin Wright, District Wildlife Manager, this fence was reviewed and approved by the regional Division of Wildlife Office.

During cross examination by Respondent's Attorney, Ms. Whisler, Mr. Brown testified that he averages one tree sale per year. He also responded during questioning that he estimated the fenced area to be close to one acre in size.

Ms. Michelle Whisler, attorney for Respondent, called Mr. Steve Miller, Certified Residential Appraiser, as her first witness. Mr. Miller testified regarding the Pitkin County Assessor process for receiving agricultural classification. Relative to the subject property, Mr. Miller testified that an application for agricultural classification had been completed by Mr. Brown along with the submittal of various documents in support of his agricultural activity. Mr. Miller stated that he viewed the property in August of 2010 and determined the fenced area engaged in tree farming on the property to be approximately 13,000 square feet of the total 55 acre property. Mr. Miller further testified that based upon a review of the Assessor Reference Library and discussions with the Division of Property Taxation, the subject tree farm use did not qualify for agricultural classification, said denial being based upon the following reasons:

- The relatively small size of the tree farm qualified as an incidental use, not the primary use
- Not only had a profit not been achieved since 2007, but it was his opinion that a profit was unlikely to ever be achieved
- Raised beds do not qualify for agricultural classification; trees are not produced from the land, but the growing is similar to a nursery operation

Petitioner presented insufficient probative evidence and testimony to show that the property was incorrectly classified as vacant land for tax year 2011.

The Board concludes that the tree growing conducted on the subject property is an incidental use of the subject, certainly not the primary use. The portion of the overall property utilized for tree growing is extremely small relative to the available property. The Board noted that a larger portion of the property is dedicated to garage/shop storage, parking and vehicular circulation associated with garage/shop use, than to the tree growing use.

ORDER:

The Petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 23rd day of October, 2012.



BOARD OF ASSESSMENT APPEALS

Diane M. Davies

Diane M. Davies

Amy J. Williams

Amy J. Williams

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

Milla Crichton

Milla Crichton