

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 60909

Petitioner:

DONALD ELLIOTT,

v.

Respondent:

**MONTROSE COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 25, 2013. Diane M. DeVries and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by Carolyn Clawson, Esq. Petitioner is protesting the 2012 classification of the subject property.

Subject property is described as follows:

**21161 Uncompahgre Road, Montrose, Colorado
Montrose County Schedule No. R0007918**

The subject property consists of 21.53 acres, a two-story residence built in 1889, river frontage, and water rights. Located in rural Montrose, 21.03 of the total acreage is hayed and grazed and is classified agricultural. The remaining 0.50 acre on which the house is located is classified residential for tax year 2012 and is the subject of this appeal.

The appeal references House Bill 11-1146, which addresses up to two acres within agriculturally-classified land on which a residential improvement is located. The bill references 39-1-102(1.6)(a)(I)(A): "*Agricultural land*" under this subparagraph (I) shall not include two acres or less of land on which a residential improvement is located unless the improvement is integral to an agricultural operation conducted on such land." Further, (I)(B) states that "*a residential improvement shall be deemed to be 'integral to an agricultural operation' for purposes of subparagraph (A) of this subparagraph (I) if an individual occupying the residential improvement either regularly conducts, supervises, or administers material aspects of the agricultural operation or is the spouse or a parent, grandparent, sibling, or child of the individual.*"

Respondent assigned agricultural classification for 21.03 acres (\$3,200 for irrigated land and \$110 for grazing land) and residential classification for the remaining 0.50 acre with the residence (\$64,000 for land and \$100,620 for the residence) for a total of \$167,930. Petitioner is requesting agricultural classification for the entire 21.53 acres.

Petitioner testified that his land has been used as hay pasture for the past twenty years. For tax year 2012, he had a verbal agreement with Mr. Bret Saunders to graze cattle and received payment for grazing rights. In order to optimize yield, Mr. Elliott maintained the land: fields were fertilized, noxious weeds were chemically sprayed, his tractor was maintained, and trees were cut; irrigation ditches were cleaned, weeds were burned, and pipes were laid in the spring and removed in the fall. Other duties included accounting for his expenses (equipment, fuel, chemicals, repairs), payments from Mr. Saunders, and preparation of tax forms.

Mr. Elliott argued that his work is integral to Mr. Saunders' agricultural operation. He spends forty to sixty hours during summer grazing months and fewer hours in the winter repairing equipment and doing administrative work. Thirty-plus animals grazed for seventy days in 2011 and twenty animals grazed for 100-plus days in 2012. Mr. Elliott argued that were his fields not grazed, he would eliminate irrigation and fertilization and reduce his workload. According to Mr. Elliott, without the increased maintenance, fewer cattle could graze and the land would eventually be barren.

Respondent's witness, Scott Goodwin, Registered Appraiser, interpreted House Bill 11-1146 as requiring the owner of the residential acreage and the owner of the agricultural operation to be one and the same (or a family member); in this case, the owner of the cattle operation was Mr. Saunders, not Petitioner. Mr. Goodwin did not consider Petitioner's maintenance and irrigation of the land to be integral to the business, and Petitioner was not related to Mr. Saunders.

Mr. Goodwin referenced 5.19 of the Assessor's Reference Library: "a residential improvement is considered integral if an individual occupying the residential improvement regularly: conducts, supervises, or administers material aspects of the agricultural operation". Further, "examples of regular participation may include bookkeeping for the operation or ongoing physical involvement". He considered Petitioner's maintenance of the land to be typical for a landowner, acknowledging that some owners are better caretakers than others. Mr. Goodwin did not consider Petitioner's maintenance of the land to be whatsoever related to the cattle operation. The Montrose County Assessor's Office interprets House Bill 11-1146 as requiring ownership of the land and the agricultural operation to be held or conducted by the same or related entities.

Petitioner presented sufficient testimony and evidence to convince the Board that the 0.5 improved parcel should be classified as agricultural.

Pursuant to Section 39-1-102(1.6)(a)(1)(A), C.R.S., two acres or less of land on which a residential improvement is located may be classified as agricultural land if the improvement is integral to an agricultural operation. The statute deems "integral to an agricultural operation" residential improvements that are occupied by individuals who regularly conduct, supervise, or administer material aspects of the operation. Section 39-1-102(1.6)(a)(1)(B), C.R.S.

The application of the statute requires a two-step analysis: first, a determination must be made as to whether the residential improvement, by itself, is integral to the agricultural operation; and second, whether the individual(s) occupying the improvement regularly conducts, supervises, or administers material aspects of the agricultural operation.

After consideration of the facts of this case, the Board is convinced that the residential improvement has no relationship to the agricultural operation; it is solely residential. Therefore, the residential improvement, in and of itself, is not integral to the agricultural operation. However, the Board is convinced that the involvement of Petitioner, who occupies the residence, qualifies the 0.50 acres of land beneath the residence for agricultural classification. The Board finds that Petitioner regularly conducts, supervises, and administers material aspects of the operation. Petitioner's ongoing maintenance of the land improves the condition of the land and allows a greater number of cattle to graze. Without Petitioner's maintenance, the land would eventually be barren and grazing would cease. The operation's twenty-year history is due, in part, to Petitioner's maintenance of the soil, ditches, and fencing.

ORDER:

Respondent is ordered to change classification of the 0.5 improved acre to agricultural. The Montrose County Assessor is directed to change records accordingly.

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 7th day of August, 2013.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Diane M. DeVries

Mary Kay Kelley

Mary Kay Kelley

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

Milla Lishchuk

Milla Lishchuk

