

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>GRANDOTE GOLF & COUNTRY CLUB, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>HUERFANO COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 69745</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 20, 2017, Debra A. Baumbach and Sondra W. Mercier presiding. Petitioner was represented by Douglas Gradisar, Esq. Respondent was represented by Garrett Sheldon, Esq. Petitioner is protesting the actual value and classification of the subject property for tax year 2016.

TAX YEAR IN QUESTION

Although the Petition form that Petitioner submitted to the Board of Assessment Appeals indicates that Petitioner’s appeal pertains to 2015 and 2016 tax years, all of the supporting documentation that Petitioner submitted along with the Petition refers to tax year 2016 only. Petitioner did not provide a copy of the Huerfano Assessor’s Notice of Determination for the subject property from 2015 or any other documentation indicating that Petitioner appealed the subject’s 2015 value at the County level of appeal. Therefore, this Order addresses the valuation and classification of the subject property for tax year 2016 and not for tax year 2015. If Petitioner wishes to pursue abatement of 2015 taxes on the subject property and have not already done so, Petitioner’s deadline for filing an abatement petition with the Board is January 1, 2018.

DESCRIPTION OF THE SUBJECT

Subject property is described as follows:

**Grandote Golf & Country Club, LLC
Multiple Huerfano County Schedule Nos. 2310601 (+28)**

The subject of this appeal is the former 18-hole, public, Grandote Golf and Country Club and multiple vacant residential lots that are adjacent to it.

The Grandote Golf and Country Club was classified as “commercial land” by Huerfano County for tax year 2016 (identified as parcel Nos.: 28-5267-282-00-113 and 28-5267-282-01-094). Charles R. Briggs, owner of the course, testified that the course had been operating at a loss for many years, and that on October 31, 2014 the course was closed and has remained closed to date. Mr. Briggs contended that “from time to time” over the past years hay has been grown on the subject property.

To support the reclassification, Mr. Briggs provided a photo of approximately 1,100 bales of Broome pasture mix hay that was auctioned off on October 13, 2007 for the benefit of the La Veta Library. Mr. Briggs testified that hay was not baled on the property every year because doing so was not economically feasible. In addition, Mr. Briggs stated that hay bailing operations on the subject has never been profitable. Mr. Briggs added that hay was not harvested on the subject in 2016.

Further, Mr. Briggs testified that in 2016 he planted a one-acre plot of hemp on the subject to test if it would provide a viable crop. Although the test was successful, hemp was not re-planted on the subject in 2017. Mr. Briggs also testified that he owns water rights for the subject property. According to Mr. Briggs, the subject had already had decreed water rights when Mr. Briggs purchased it.

In addition, Mr. Briggs testified that the agricultural classification was granted for similar properties in the County including Black Diamond Park and Hole in the Wall Ranch.

According to Mr. Briggs, the portion of the subject previously used as a golf course should be re-classified as agricultural use for tax year 2016 based on the existence of decreed water rights pursuant to Section 39-1-102(1.6)(a)(IV), C.R.S

Petitioner is also protesting the actual value placed on the vacant parcels that are also the subject of this appeal. The parcels are part of the Grandote Golf and Country Club residential subdivision and are located adjacent to the golf course. Mr. Briggs provided a copy of a newspaper article which indicated that the Huerfano County Board of County Commissioners acting as the County Board of Equalization granted Black Diamond Park a 50% reduction in value to 78 vacant lots. Based on the reduction granted to Black Diamond Park, Petitioner contended that the County should grant the same 50% reduction to the value of the subject vacant lots.

Regarding the reclassification of the golf course, Respondent’s witness, Mr. Bruce Quintana, a certified appraiser with the Huerfano County Assessor’s Office, testified that Petitioner had not followed the procedures required to support a change to agricultural classification. Mr. Quintana noted the lack of documentation supporting the existence of an agricultural enterprise on the subject property, including such items as bills of sale, chemical treatment costs, lease agreements, or details concerning water rights. According to Mr. Quintana, inspection of the subject property did not

reveal evidence of agricultural activities on the subject (no agricultural equipment, etc.) sufficient to justify reclassification of the subject parcels previously used as a golf course.

According to Mr. Quintana, Petitioner's support documentation was limited to the 2007 newspaper photo of donated hay. Respondent contended that a single photo is not an adequate proof that the property had been used agriculturally. Mr. Quintana testified that he was not provided with any documentation concerning the nature of the water rights associated with the subject property.

Mr. Quintana stated that the subject's highest and best use is that of a golf course. In addition, Mr. Quintana testified that since the golf course closed in October, 2014 which was after the applicable data collection period for tax year 2016 (January 1, 2013 through June 30, 2014), the subject remained classified as commercial through 2016 tax year.

With regards to the vacant lots, Mr. Quintana testified that he valued the lots individually, applied present worth discounting to the retail lot value, and gave an additional discount of 10% to account for economic obsolescence.

ANALYSIS

This case presents two specific questions to the Board:

- Should the two former golf course parcels be re-classified as agricultural use, and
- Was the assessor's valuation of the vacant lots incorrect?

Colorado Revised Statute, Section 39-1-102(1.6)(a)(IV), C.R.S. defines "Agricultural land" as:

A parcel of land . . . used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, if the owner of the land has a decreed right to appropriated water granted in accordance with article 92 of this title 37, C.R.S., for purposes other than residential purposes, and water appropriated under such right or permit shall be and is used for the production of agricultural or livestock products on such land [.]

Assessor's Reference Library ("ARL") provides guidance for practical application of Section 39-1-102(1.6)(a)(IV), C.R.S. According to the ARL, for a parcel of land to qualify for agricultural classification based on decreed water rights, the following requirements must be met:

- The land must be used as a farm or ranch on the assessment date, and
- The owner of the land must have a decreed right to appropriated water granted in accordance with article 92 of title 37, C.R.S., or
- A final permit to appropriated ground water granted in accordance with article 90 of title 37, C.R.S., and
- The water must be used for purposes other than residential purposes, and
- The water appropriated must be used for the production of agricultural or livestock products on the land. ARL, Vol. 3, Pages 5.22-23.

Subsection 3.5 of Section 39-1-102 C.R.S. defines “farm” as a parcel of land which is used to produce agricultural products that originate from the land’s productivity for the primary purposes of obtaining a monetary profit.” (Emphasis added). In *Palmer v. Eagle County Board of Equalization*, 957 P.2d 348, 349 (Colo. App. 1998), the court held that the taxpayer has the burden of proof to show any qualifying “ranching” and/or “farming” uses of his land in support of his claims for agricultural classification.

Petitioner presented insufficient probative evidence and testimony to prove that the subject golf course was incorrectly classified for tax year 2016.

Although Petitioner argued for reclassification of the former golf-course parcels to agricultural land based on the presence of decreed water rights, Petitioner failed to present any documentation pertaining to the quality and nature of those water rights.

Further, Petitioner failed to convince the Board that the subject has been used as a “farm” for the primary purpose of producing monetary profit from agricultural products grown on the property as required by Section 39-1-102(3.5), C.R.S. The Board found the single newspaper photograph from 2007 of donated hay and photos reportedly from the one-acre test hemp production on the subject in 2016 were insufficient to support the reclassification of the subject from commercial to agricultural land for tax year 2016. Testimony and documentation indicates that Mr. Quintana advised Petitioner what documents were required to support agricultural use and no such documentation was presented either to the Assessor’s Office or to the Board. Petitioner provided no evidence concerning the valuation of the golf course parcels.

Petitioner presented insufficient probative evidence and testimony to prove that the vacant lots adjacent to the former golf course were incorrectly valued for tax year 2016.

Petitioner argued that the subject was not valued fairly relative to other properties in the area, citing “equal protection.” According to Petitioner, the Board should reduce the value of the vacant parcels by 50% based on the 50% reduction granted to Black Diamond Development by the Huerfano CBOE. Besides the equalization argument, Petitioner did not present any additional valuation evidence pertaining to the subject vacant lots. Nor did Petitioner present any other probative evidence indicating error in Respondent’s valuation of the subject vacant lots for tax year 2016.

The Board can only consider an equalization argument as support for the value determined using the cost, market, or income approach to appraisal. For an equalization argument to be effective, Petitioner must also present evidence or testimony that the assigned value of the comparable properties was correctly determined. As that evidence and testimony was not presented, the Board can give no further consideration to the equalization argument presented by Petitioner. See *Arapahoe County Board of Equalization v. Podoll*, 935 P.2d 14, 17 (Colo 1997).

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-nine 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-nine 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 21st day of July, 2017.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Sondra W. Mercier

Sondra Mercier

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

Milla Lishchuk
Milla Lishchuk

