

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>KEMPER S. WATKINS,</p> <p>v.</p> <p>Respondent:</p> <p>PARK COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 70526</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 5, 2018, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner appeared pro se. Respondent was represented by Christiana McCormick, Esq. Petitioner is protesting the 2017 classification and actual value of the subject property.

Without objection from either party, the Board admitted Petitioner’s exhibits 1 through 22 and Respondent’s exhibits A through Z.

Subject property is described as follows:

**5995 Antero Drive, Hartsel, Colorado
T12 R76 S08 SE4 Thousand Peaks Ranch Amended Plat
Lot 134, 222 and 223
Park County Schedule No. R0041764**

The subject property consists of a 113.86-acre fenced parcel located in the Thousand Peaks Ranch Subdivision. It is improved with a 7,200-square foot metal outbuilding that was completed in 2005, and a 432-square foot shed of unknown age. In 2017, the subject was reclassified from agricultural use, to residential use, then revised as vacant land.

Petitioner is requesting agricultural classification and a reduction in value for the subject property for tax year 2017. Respondent assigned a value of \$172,495 for the subject property for tax year 2017 and classification as vacant land.

Kemper Watkins, Petitioner, testified that he purchased the subject in 2013 with the intention of raising buffalo. At the time of purchase, there was a grazing lease in place and the subject was classified as agricultural use. Mr. Watkins continued to receive the favorable agricultural classification for tax years 2014, 2015 and 2016.

Petitioner presented copies of letters indicating that he was contacted in early-2017 by an employee of the Park County Assessor's Office requesting documentation to show that the property was used for agricultural purposes. Mr. Watkins provided a two-year "Pasture Lease Agreement" dated February 10, 2017 that allowed grazing of up to 10 donkeys. In March 2017, Mr. Watkins received a letter from the Assessor's office indicating that "grazing and boarding of pleasure equine does not qualify as a ranching use for tax classification" based on the case of *John S. Palmer v. Board of Equalization, Eagle County and Mary Huddleston Intervenor*, 957 P.2d 348 (Colo. App 1998). He subsequently produced a revised lease that indicated grazing of 5 to 15 head of cattle along with a 2014 livestock bill of sale for 4 head of cattle purchased by the lessee. In April 2017, Mr. Watkins received a letter from the Park County Assessor stating that the property had been reclassified as residential use for tax year 2017. A September 2017 letter indicated that the reclassification to residential use was in error and that the subject would in fact be reclassified as residential vacant land.

To support the agricultural use, Mr. Watkins testified that the property had been used periodically since 2014 for grazing of horses, although there was no formal lease in place. He testified that no animals were placed on the property under the 2017 Pasture Lease Agreement.

Petitioner presented no comparable sales but submitted a two-page print out from the IRS website arguing that insufficient consideration had been given to depreciation of the outbuilding on the subject that Petitioner described as being over 20 years old; therefore, the value of the structure was above market.

Respondent's witness, Abby Carrington, testified that an exterior fence-line inspection was completed on June 12, 2017. Ms. Carrington submitted photos from that inspection and reported that she had observed no evidence of grazing on the subject; citing the condition of grasses, ground condition, and lack of animal waste. A prior inspection in September 2014 also produced no evidence of livestock use. Timeline evidence submitted by Respondent appears to mirror Petitioner's testimony.

Ms. Carrington acknowledged that, subsequent to inspection, a new grazing lease was reported, and livestock was on-site as of July-August of 2017. Because the property was used for agricultural grazing during a portion of 2017, that year could potentially become the first of three years required for qualification.

Respondent supported the value of \$172,495 for the subject property based on the market approach, a cost analysis, and multiple regression analysis. The income approach was considered but not applied due to insufficient data.

Respondent presented three comparable sales including the purchase of the subject, ranging in sale price from \$179,000 to \$379,000. After adjustments were made, the sales indicated a value range of \$221,500 to \$312,141.

Ms. Carrington presented a cost approach to derive a market-adjusted value for the subject of \$203,158. A market-adjusted, depreciated cost value was derived using Marshall & Swift Valuation Service data, a state-approved cost estimating service, to indicate building value of \$145,143; attributing \$143,536 to the metal building and \$1,607 to the shed. A value of \$58,015 was placed on the land to produce a total value of \$203,158 using the cost approach.

Respondent assigned an actual value of \$172,495 to the subject property for tax year 2017.

To qualify as “agricultural land” under Section 39-1-102(1.6), C.R.S., the land, at minimum, must (1) be used as a farm or a ranch during the tax year at issue; and (2) have been so used during the preceding two-year period.

A “farm” is defined as “a parcel of land which is used to produce agricultural products that originate from the land’s productivity for the primary purpose of obtaining a monetary profit.” Section 13-1-102 (3.5), C.R.S. A “ranch” means a parcel of land which is used for grazing livestock for the primary purpose of a monetary profit. Section 39-1-102(13.5), C.R.S.

Thus, to be eligible for favorable agricultural classification for 2017 tax year, the subject parcel must have been used as a farm or a ranch in 2015, 2016 and 2017. In addition, a showing must be made that the farming and/or ranching operations during the statutory three-year time frame were conducted for the primary purpose of obtaining a monetary profit. Such primary purpose of obtaining a monetary profit can be supported by grazing lease agreements; sale receipts; form 1040F or equivalent; purchasing invoices; financial statements; etc.

While the Board was convinced that a grazing lease was in place for grazing of cattle in 2017, Petitioner acknowledged that there were no animals grazing the property during the 2015 and 2016 tax years pursuant to a written lease agreement. Although Petitioner allowed horses on the property during that period, there was no indication that Petitioner derived monetary profit from grazing. Such gratuitous grazing does not constitute a qualifying agricultural use. *See e.g. C.A. Staack Partnership v. Bd. Of Cnty. Com’rs of Cnty. of Arapahoe*, 802 P.2d 1191, 1193 (Colo. App. 1990) (livestock grazing must be for the primary purpose of obtaining a profit to qualify for agricultural classification). The Board was convinced that while Petitioner’s intention was for an agricultural use, there was no **actual use** of the subject to qualify for agricultural classification. *See Boulder Cty. Bd. Of Equal. v. MDC Const. Co.*, 830 P.2d 975 (Colo. 1992).

After consideration of all three approaches to value, Respondent applied the cost and sales comparison approach to support the assigned value. Additional evidence before the Board to support the value included a qualified sale of the subject within the extended base period (October 2013) for \$221,500, and a building permit for the 7,200-square foot metal shed dated November 5, 2004 indicating cost of \$163,440.

Petitioner's support for a lower value included an Internal Revenue Service (IRS) depreciation schedule and a hand written price estimate for the outbuilding. The Board is persuaded that Respondent's valuation of the subject, which was prepared in accordance with the statutory law that mandates that the subject's actual value be "determined by appropriate consideration of the cost approach, the market approach, and the income approach to appraisal," was more persuasive than Petitioner's evidence. *See* Section 39-1-103(5)(a), C.R.S.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly classified or valued for tax year 2017.

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 15th day of February, 2018.

BOARD OF ASSESSMENT APPEALS

Diane M DeVries

Diane M. DeVries

Sondra W Mercier

Sondra W. 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

