

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

Docket No.: 75433

Petitioner:

DANIEL C. AND JOYCE Y. BROST,

v.

Respondent:

**ARAPAHOE COUNTY BOARD OF
COMMISSIONERS.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on October 21, 2019, Debra A. Baumbach and Amy J. Williams presiding. Petitioners were represented by William A. McLain, Esq. Respondent was represented by Benjamin Swartzendruber, Esq. Petitioners are requesting an abatement/refund of taxes on the subject property for tax year 2017.

EXHIBITS AND WITNESSES

Petitioners' Exhibits 6 - 9 were admitted into evidence. Respondent's Exhibits A - C were admitted into evidence. Ms. Karen Hart was admitted as Respondent's expert.

PROPERTY DESCRIPTION

**7990 S. Santa Fe Drive
Littleton, CO 80120
Arapahoe County Schedule No.: 2077-32-3-01-004**

The subject property consists of 2.18 acres and is utilized as a horse facility. The subject property is an irregular shaped parcel with mostly flat terrain and mature landscaping and trees. The subject property has a house and various outbuilding, plus an outdoor arena and parking area. There are nine buildings on the property: a small utility building used for tack storage; an indoor arena with an attached stable; a second indoor arena with an attached stable; three barns with horse stalls; and a pole barn attached to one of the barns.

The subject is a part of a multi-parcel ranch operated as Coventry Farms. Coventry Farms owns, boards and leases horses. The horses are leased to private individuals and to The Right Step, Inc., to provide equine assisted activities to individuals with physical, cognitive, emotional, behavioral and learning disabilities.

For tax year 2017, Respondent assigned a value of \$43,600 for land, classified as other agricultural land, \$93,488 for the residential house and associated residential improvements, and \$232,424 for the other agricultural buildings. The 2017 assigned total value for the subject property is \$369,512.

Petitioners are protesting the “other agricultural” classification of the land portion of the subject property. According to Petitioners, the land portion of the subject property should be classified as “agricultural” due to grazing activities that take place on the parcel. Valuation/classification of other components of the subject property are not in dispute.

PETITIONERS’ PRESENTATION

Ms. Cheryl Clossen testified as Petitioners’ first witness. Ms. Clossen is a representative of The Right Step, Inc. The Right Step, Inc. leases horses and facilities from the Coventry Farms. Ms. Clossen testified that she took several photographs of horses at Coventry Farms which were included in Petitioners’ exhibits. The photographs were taken in September of 2019. Ms. Clossen testified that students of The Right Step, Inc. hand-graze their horses on the property and that she usually hand-grazes her horse in various spots on the property after each ride, approximately four-five times per week in the summer.

As the second witness, Petitioners presented the testimony of Mr. James R. McConnell. Mr. McConnell is a part-owner of Coventry Farms. Mr. McConnell testified that Coventry Farms program was started to maintain a stream of income after the economic downturn of 2008 as well as to contribute to community. Presently, there are approximately 50 horses owned by Coventry Farms and approximately seven horses that are boarded at Coventry Farms. Coventry Farms leases out some of the horses for classes. Mr. McConnell described which portions of Coventry Farms are being grazed and provided details as to the photographs of the subject property presented within Petitioners’ exhibits.

RESPONDENT’S PRESENTATION

Respondent presented the testimony of Ms. Karen Hart, Land Development Supervisor with Arapahoe County Assessor’s Office. Ms. Hart testified that inspection of the subject parcel took place in 2014 and 2017. Ms. Hart testified that the subject parcel is covered by improvements, such as paddocks, exercise pens, arena and roads and that there is no room for grazing. According to Ms. Hart, the subject parcel is classified as “other agricultural” because the horses are not grazed to make a profit from grazing. To the contrary, the profit derived is from leasing the horses not from the grazing of the land. Because the land on the subject parcel is not used for grazing or for producing agricultural products that originate from the land’s productivity but from the use of the horses for riding lessons, Ms. Hart determined that “other agricultural” classification is appropriate.

BURDEN OF PROOF

In a proceeding before the Board, the taxpayer has the burden of proof to establish, by a preponderance of evidence, that the assessor's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Preponderance of the evidence refers to the evidence that is most convincing and satisfying in the controversy between the parties. *Batterberry v. Douglas Cty. Bd. of Equalization*, 16CA1490 (Colo. App. 2017). The evaluation of the credibility of the witnesses and of the weight, probative value, and sufficiency of the evidence is solely within the fact-finding province of the BAA. *Bradford v. Chaffee Cty. Bd. of Equalization*, 12CA0927 (Colo. App. 2013).

THE BOARD'S FINDINGS

"Agricultural land" means a parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that was used the previous two years and presently is used as a farm or ranch, as defined in subsection (3.5) and (13.5)... Section 39-1-102(1.6)(a)(I)(A), C.R.S. "Ranch" means 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. Section 39-1-102(13.5), C.R.S. "Farm" means 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 39-1-102(3.5), C.R.S.

Evidence presented before the Board offered little dispute that the primary purpose of the subject Coventry Farms property is to derive a profit from the boarding and leasing of horses utilized for riding lessons. However, what is in dispute is whether the horses are "grazing livestock." Considering all of the active uses of the subject property (two indoor arenas, three barns, several utility outbuildings, parking lot, landscaping, driveways) only a small percentage of the surface area remains available for livestock grazing. Petitioner testimony reported that only hand grazing was available in small patches around the improvements. Overall, the size of the available grazing area along with the logistics necessitated by the location and configuration of these areas, renders livestock grazing on the subject property meaningless. The Board recognizes that there is no minimum amount of grazing defined within the statutory definition of a "ranch," however, that does not mean that a de minimis, contorted grazing effort was contemplated within the statutory framing of agricultural classification for property tax purposes.

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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 6th day of November, 2019.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Amy J. Williams

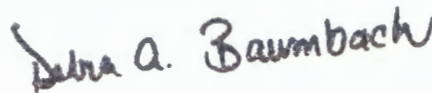


I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Milla Lishchuk

Concurring Board Member:



Debra A. Baumbach,
*concurring without modification pursuant to
Section 39-2-127(2), C.R.S.*