The Land Assessment and Classification Task Force

Final Report
October 15, 2010

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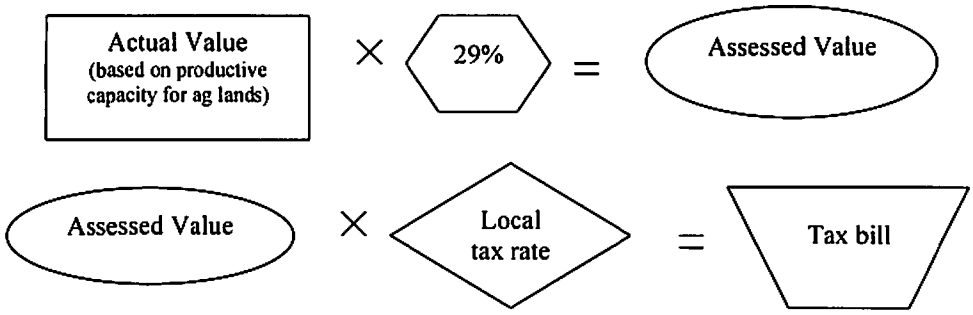
Introduction

The Land Assessment and Classification Task Force (Task Force) was created by ***HB10-1293 Study Agricultural Exemption Property Tax*** (Massey, Whitehead) (Appendix 1) and resides under article 1 of title 39.

The impetus for HB10-1293 was the recognition that some homeowners are claiming an agricultural classification without being a part of a bona fide agricultural operation on the corresponding land. In some cases, an agricultural classification equates to a lower property tax bill. This is because the actual value for agricultural lands is based on the productive capacity of the land. Therefore, a low productive capacity equates to a low tax bill. Figure 1 provides a visual representation of the formula used to determine a farmer or rancher's tax liability.

Figure 1



In accordance with state statute, the task force met during the interim "to study assessment and classification of agricultural and residential land..." CRS 39-1-122 (2)(a). The following is the task forces' final report. It identifies members of the task force, summarizes the four task force meetings, outlines the perspectives of each represented group, and details the task forces' recommendation.

Task Force Members

The task force consisted of nine members. Four of the nine members were "...owners or lessees of real property that is currently assessed as agricultural land and who are actively involved in either farming or ranching..." CRS 39-1-122 (2)(b)(II). Specifically, these four members were: Tim Canterbury, President of the Colorado Cattlemen's Association, Alan Foutz, President of the Colorado Farm Bureau, Kent Peppler, President of the Rocky Mountain Farmers Union and Gene Pielan, General Manager of Gulley Greenhouse.

Another two members of the task force were county commissioners representing "...each side of the continental divide." CRS 39-1-122 (2)(b)(III). Specifically, these two

members were: Gunnison County Commissioner Hap Channell and Arapahoe County Commissioner Frank Weddig.

There were also two members of the task force who were county assessors representing "...each side of the continental divide." CRS 39-1-122 (2)(b)(IV). Specifically, these two members were: Otero County Assessor Ken Hood and Montrose County Assessor Brad Hughes.

The ninth member of the task force was JoAnn Groff, Colorado's Property Tax Administrator CRS 39-1-122 (2)(b)(I). Ms. Groff was elected by the task force to serve as the task force chairman.

Task Force Meetings

In accordance with state statute, the task force met a total of four times. Each meeting was properly noticed and open to the public. Public comment was allowed and encouraged at all meetings. All meetings were held at Colorado Counties, Inc's building and teleconferencing was advertised as an option for all interested parties. All of the task force's supporting documents were posted on Colorado Counties, Inc's website (www.ccionline.org) and made available to attendees of each meeting.

The first meeting was held on Thursday, July 8th from 12:30 – 4:30pm. The meeting agenda, minutes, and support documents can be found in Appendix 2. At the first meeting, staff with the Division of Property Taxation explained the component parts of the current statutory definition of "agricultural land". Staff also highlighted case law to explain the implementation and clarification of the definition over the years. Task force members began to identify the scope of their work and focus for future meetings.

The second meeting was held on Thursday, July 29th from 12:30 – 4:30pm. The meeting agenda, minutes, and support documents can be found in Appendix 3. Responding to a request to better identify the problem, the county assessors gave a presentation showing various parcels that are currently classified as agricultural but based on the assessor's experience, had questionable or marginal agricultural operations. The assessors also listed nine specific areas of concern which helped the task force narrow its focus even more. Information on how other states define and classify agricultural lands was also provided by the Division of Property Taxation.

The third meeting was held on Wednesday, August 18th from 12:30 – 4:30pm. The meeting agenda, minutes and support documents can be found in Appendix 4. While no formal vote was taken, the task force agreed to limit their remaining conversations to examining a possible mixed use agricultural/residential classification. The task force brainstormed whether or not some portion of a farm or ranch – other than the residential structures - could be classified as residential in cases where the residence of a farm or ranch is not integral to the agricultural operation.

The fourth meeting was held on Thursday, September 23rd from 12:30 – 4:30 pm. The meeting agenda, minutes and support documents can be found in Appendix 5. Responding to a request by task force members, analyses illustrating the potential impact to the residential assessment rate better known as "Gallagher" impact and tax liability of classifying residences that are not integral to a farm or ranch as residential were explained. Task force members narrowed their focus even more so and provided a series of suggested changes to a draft of legislative language that was presented to them for discussion purposes.

Representatives' Perspectives

Representatives of the agricultural community are concerned about keeping agriculture a viable business, not just for farmers and ranchers themselves but also for consumers who rely on agricultural products. To farmers and ranchers, property taxes are a fixed cost, and unlike other businesses, farmers and ranchers cannot pass off these fixed costs to customers. Any unintended consequences of amending agricultural statutes are a real concern and must be factored into any decisions or recommendations. The agriculture representatives further emphasized, for the record, that the agricultural property tax classification laws are directed toward the use of the land for agriculture purposes, not toward who the owner is, their chosen profession, net worth or if they personally work the land or not. It was the general belief of the agriculture representatives that the existing law and enforcement mechanisms are able to discern between these two points and take corrective action, if deemed appropriate.

The county commissioner members of the task force emphasized their desire to not negatively impact legitimate agricultural operations. There are loopholes in the existing statutory definition of 'agricultural land' which some landowners are using to their advantage. This creates an equity issue. The ability of some entrepreneurial land owners to take advantage of these loopholes does not make it right. Furthermore, these individuals use public services like roads, libraries, parks and schools just like all other taxpayers and should pay their fair share. Absent tighter definitions, second homeowners and developers will continue to take advantage of the current situation and claim an agricultural classification for their land.

The county assessor members of the task force also emphasized their desire to not negatively impact legitimate agricultural operations. Assessors want clearer statutory language. Agricultural rules need to be standardized so that county assessors across the state are consistent with their approaches and interpretations. Better – and possibly stricter guidelines – are needed to help address a litany of issues, among which include agricultural properties with residences and vacant parcels. Current law does not have a minimum acreage requirement, a grazing duration requirement, a minimum income for the land requirement, a minimum income for the operator requirement, a primary purpose criterion, a hobby farm classification or a mixed use classification.

For the purposes of facilitating a discussion among task force members, CCI staff offered some draft legislative language that: 1.) classified the county's minimum lot size as

residential; 2.) exempted lands with minimum lot sizes that are integral to farming and ranching from any classification changes; and 3.) authorized the Division of Property Taxation to define 'integral to an agricultural operation'.

Task Force's Recommendation

Over the course of several meetings, the task force agreed to limit the focus of their conversations to examining a possible mixed use agricultural/residential classification. Under current statute, the residence on a farm or ranch is classified and assessed as residential. The land under the residence, however, is classified and assessed as agricultural. CRS 39-1-102 (1.6)(a)

Some members of the task force argued that since you cannot farm or ranch the land under the residence, it should not receive an agricultural classification. It can be argued that other features of a farm or ranch – the garage, the driveway, the yard, etc. – also cannot be farmed or ranched and should not be designated as agricultural either. Based on this argument, members of the task force agreed to look at some portion of a farm or ranch that could be classified as residential.

Other members of the task force argued that – in many cases – their homes are integral to their agricultural operations. Livestock care and other farm and ranch management activities may occur in an agricultural producer's residence. Other vital agricultural management resources may also be stored in the farm or ranch residence and adjacent buildings/structures. Most members of the task force agreed that farmers and ranchers whose residential structures are integral to their agricultural operations should continue to receive an agricultural classification on all of their land, including the land under their home.

Over the course of the above referenced meetings and with consideration of the accumulated support documents, public comments, and staff input, the task force discussion resulted in the following recommendations:

1.) Establish a maximum of 2 indiscriminate acres that are subject to residential classification when the residence is not integral to an agricultural operation.
2.) Specify that when the lot size is less than the determined indiscriminate acreage, the portion of the lot not used for agricultural purposes should be subject to residential classification when the residence is not integral to an agricultural operation.
3.) Require the Division of Property Taxation with legislative guidance to define "integral to an agricultural operation" through their appropriate processes by considering the level of personal participation of the occupants of the residence in an agricultural operation, whether the owner personally participate in an agricultural operation, whether multiple properties are involved in a single agricultural operation and the nature of an agricultural operation itself.
4.) If any individual legislators determine to carry legislation forward the task force recommends items 1 thru 3 be included in any such legislation.

Appendix 1

HB10-1293 Study Agricultural Exemption Property Tax

NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

HOUSE BILL 10-1293

BY REPRESENTATIVE(S) Massey, Curry, Labuda, Pommer, Scanlan, Todd, Vigil, Hullinghorst, Merrifield, Middleton;
also SENATOR(S) Whitehead.

CONCERNING THE CREATION OF A TASK FORCE TO STUDY PROPERTY TAX ASSESSMENT ISSUES RELATED TO THE USE OF LAND FOR AGRICULTURAL PURPOSES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 1 of title 39, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

39-1-122. Interim task force to study property tax assessment - classification - land used for agricultural and other purposes - 2010 interim - legislative declaration - repeal. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

(a) IT IS WITHIN THE POWER OF THE GENERAL ASSEMBLY AND SECTION 3 OF ARTICLE X OF THE STATE CONSTITUTION TO CLASSIFY PROPERTY FOR PURPOSES OF TAXATION;

(b) THE TOUCHSTONE OF PROPERTY CLASSIFICATION IN COLORADO

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

IS ACTUAL USE OF THE PROPERTY AT THE TIME OF ASSESSMENT;

(c) PROPERTY MAY BE USED FOR MORE THAN ONE PURPOSE AND, THEREFORE, RAISE COMPETING CONSIDERATIONS AS TO THE MANNER IN WHICH IT SHOULD BE CLASSIFIED;

(d) AN AGRICULTURAL CLASSIFICATION MEANS THAT THE ACTUAL VALUE OF A PROPERTY IS BASED ON ITS PRODUCTIVE CAPACITY RATHER THAN ITS MARKET VALUE AND IT IS ASSESSED FOR TAXATION AT TWENTY-NINE PERCENT OF ITS ACTUAL VALUE, AS WITH ALL OTHER NONRESIDENTIAL PROPERTY;

(e) A RESIDENTIAL CLASSIFICATION MEANS THAT THE ACTUAL VALUE OF A PROPERTY IS BASED ON ITS MARKET VALUE, WHICH MAY RESULT IN A HIGHER TAXABLE VALUE EVEN THOUGH IT IS ASSESSED FOR TAXATION AT LESS THAN EIGHT PERCENT OF ITS ACTUAL VALUE;

(f) PROPERTY ACTIVELY USED FOR AGRICULTURAL PURPOSES SHOULD BE PROTECTED AGAINST EXCESSIVE PROPERTY VALUATION AND TAXATION, BUT AGRICULTURAL CLASSIFICATION THAT BENEFITS PROPERTY NOT ACTIVELY USED FOR AGRICULTURAL OPERATIONS SHOULD BE REEVALUATED;

(g) THE IMPLEMENTATION OF A NEW CLASSIFICATION METHODOLOGY IN COLORADO COULD AFFECT THE DISTRIBUTION OF THE PROPERTY TAX BURDEN AND THE CALCULATION OF THE RESIDENTIAL ASSESSMENT RATE; AND

(h) IT IS IMPORTANT TO CONSIDER HOW ANY CHANGE IN COLORADO'S SYSTEM OF PROPERTY TAXATION WILL AFFECT THE DISTRIBUTION OF THE PROPERTY TAX BURDEN AMONG TAXPAYERS AND HOW IT WILL INTERACT WITH OTHER COLORADO LAWS.

(2) (a) THERE IS HEREBY CREATED THE LAND ASSESSMENT AND CLASSIFICATION TASK FORCE, REFERRED TO IN THIS SECTION AS THE "TASK FORCE", WHICH SHALL MEET DURING THE INTERIM AFTER THE SECOND REGULAR SESSION OF THE SIXTY-SEVENTH GENERAL ASSEMBLY TO STUDY ASSESSMENT AND CLASSIFICATION OF AGRICULTURAL AND RESIDENTIAL LAND, REPORT ITS FINDINGS AND RECOMMENDATIONS, AND, IF APPROPRIATE, PROPOSE STATUTORY MODIFICATIONS TO ENSURE THAT LAND IS VALUED BASED ON ITS ACTUAL USE.

(b) THE MEMBERS OF THE TASK FORCE SHALL CONSIST OF THE FOLLOWING NINE MEMBERS:

(I) THE PROPERTY TAX ADMINISTRATOR OR THE ADMINISTRATOR'S DESIGNEE;

(II) FOUR MEMBERS WHO ARE OWNERS OR LESSEES OF REAL PROPERTY THAT IS CURRENTLY ASSESSED AS AGRICULTURAL LAND AND WHO ARE ACTIVELY INVOLVED IN EITHER FARMING OR RANCHING, APPOINTED BY THE COMMISSIONER OF AGRICULTURE;

(III) TWO COUNTY COMMISSIONERS, ONE FROM EACH SIDE OF THE CONTINENTAL DIVIDE, APPOINTED BY A STATEWIDE ORGANIZATION REPRESENTING COUNTY COMMISSIONERS; AND

(IV) TWO COUNTY ASSESSORS, ONE FROM EACH SIDE OF THE CONTINENTAL DIVIDE AND FROM COUNTIES OTHER THAN THE COUNTIES REPRESENTED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (b), TO BE APPOINTED BY A STATEWIDE ORGANIZATION REPRESENTING COUNTY ASSESSORS.

(c) ALL APPOINTMENTS TO THE TASK FORCE SHALL BE MADE ON OR BEFORE JUNE 15, 2010.

(3) (a) THE TASK FORCE SHALL STUDY, MAKE RECOMMENDATIONS, AND REPORT FINDINGS ON ALL MATTERS RELATING TO PROPERTY TAX ASSESSMENT AND CLASSIFICATION IN CONNECTION WITH LAND USED FOR BOTH AGRICULTURAL AND RESIDENTIAL PURPOSES, INCLUDING, WITHOUT LIMITATION, THE CURRENT SYSTEM FOR CLASSIFICATION OF AGRICULTURAL AND RESIDENTIAL PROPERTY IN COLORADO, THE FISCAL, LAND USE, AND OTHER IMPACTS OF THE STATE'S CURRENT CLASSIFICATION SYSTEM, AND IDEAS FOR IMPROVING THE CURRENT CLASSIFICATION SYSTEM.

(b) THE TASK FORCE SHALL SUBMIT A WRITTEN REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE LOCAL GOVERNMENT AND AGRICULTURE COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES BY OCTOBER 15, 2010. UPON REQUEST OF A MEMBER OF THE TASK FORCE, SUMMARIES OF DISSENTING OPINIONS SHALL BE PREPARED AND ATTACHED TO THE FINAL REPORT OF FINDINGS AND RECOMMENDATIONS.

(4) (a) THE TASK FORCE SHALL MEET AT LEAST FOUR TIMES, WITH THE FIRST MEETING OCCURRING NO LATER THAN AUGUST 2, 2010.

(b) MEETINGS OF THE TASK FORCE SHALL BE PUBLIC MEETINGS.

(5) THE TASK FORCE SHALL SOLICIT AND ACCEPT REPORTS AND PUBLIC TESTIMONY AND MAY REQUEST OTHER SOURCES, INCLUDING BUT NOT LIMITED TO THE NATIONAL CONFERENCE OF STATE LEGISLATURES, REPRESENTATIVES FROM STATE AND LOCAL GOVERNMENT, PROPERTY OWNERS, NONPROFIT ORGANIZATIONS, AND APPROPRIATE TRADE GROUPS, TO PROVIDE TESTIMONY, WRITTEN COMMENTS, AND OTHER RELEVANT DATA TO THE TASK FORCE.

(6) MEMBERS OF THE TASK FORCE SHALL SERVE WITHOUT COMPENSATION AND SHALL NOT BE ENTITLED TO REIMBURSEMENT FOR EXPENSES.

(7) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2012.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED_____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO

Appendix 2

July 8th Meeting Materials

Agricultural Assessment Task Force

Proposed Agenda for 1st Meeting

Date: Thursday, July 8th
12:30 – 4:30
Colorado Counties, Inc

- Introductions 12:30 – 12:40
- Chairperson Discussion 12:40 – 12:50
- Overview of HB10-1293 Agricultural Assessment Task Force 12:50 – 1:00
  Gini Pingenot, CCI
- Property Used for both Agricultural and Residential Purposes: A Property Tax Assessment and Classification Primer 1:00 – 2:00
  Staff Member, Division of Property Taxation
- BREAK 2:00 – 2:10
- Agriculture Perspective 2:10 – 2:30
- Commissioner Perspective 2:30 – 2:50
- Assessor Perspective 2:50 – 3:10
- Begin Task Force Member Discussion and Identification of the Scope of Work 3:10 – 4:00
- Public Comment 4:00 – 4:20
- Next Steps 4:20 – 4:30
  - Future Meetings
  - Agenda Items for Next Meeting

If you wish to join by conference call, here's the information you'll need to do so:
Conference Dial-in: 218.862.1300
Conference Code: 171009

HB10-1293 Agricultural Classification Task Force

July 8, 2010

Meeting Minutes

Attendees

Task Force Members: Brad Hughes, Ken Hood, JoAnn Groff, Alan Foutz, Tim Canterbury, Kent Peppler, Frank Weddig, Hap Channell, Gene Pielan (on phone)

Others: Kyle Hooper (Division of Property Taxation), Karen Miller (Assessors Association), Dave Wissel (Park County Assessor), Shawn Snowden (Division of Property Taxation), John Stulp (State Commissioner of Agriculture), Dick Ray (Colorado Outfitters Association), Ron Chorey (Archuleta Tree Framer), Lesli Allison (Manager Banded Peak Ranch), John Ely (Pitkin County Attorney), Landon Gates (Colorado Dairy Producers), Liz Lynch (Environment Colorado) , Jessica Kahn (Governor's Office of Legal Counsel), Alex Baker (Governor's Office), John Swartout (CCLT), Greg Yankee (CCLT), Troy Bredenkamp (CFB), Terry Fankhauser (CCA), Rep. Massey, Sen. Whitehead, Matt Carrington (Environment Colorado), Gini Pingenot (CCI), Chip Taylor (CCI), Bill Clayton (CCI), Andy Donlon (on the phone)

Chairperson Discussion

JoAnn Groff was chosen to chair the HB10-1293 Agricultural Classification Task Force

Overview of HB10-1293

Gini Pingenot gave a brief overview of HB10-1293.

Property Used for both Agricultural and Residential Purposes: A Property Tax Assessment and Classification Primer

Kyle Hooper with the Division of Property Taxation (DPT) explained the relevant statutory definitions found in CRS 39-1-102. Specifically, he walked through the definitions for 'Agricultural land', 'Farm', 'Agricultural and Livestock Products', 'Agriculture' , 'Ranch', 'Forest Land', 'Conservation Easements', 'Decreed Water Right' and 'Reclassified land'. (*A copy of his presentation and handout can be found on CCI's website – www.ccionline.org. Click on 'Announcements' and scroll to the bottom of the page*).

Kyle fielded a number of questions and provided a series of clarifications. Specifically, he explained that the definition for 'Agricultural land' provides that the land directly under a farmer/rancher's house is deemed agricultural and receives an agricultural classification. He also clarified that the future use – or the intention of the property – is not relevant when determining the land's classification. He also fielded questions about the requirement under the 'Farm' and 'Ranch' definitions that the primary purpose of such operations is to obtain a monetary profit. He explained that there is no stipulation that you have to show or prove a profit. You just have to show an intent to make a profit. There was also a question regarding DPT's 'Residential Agriculture' Classification. Kyle explained that this isn't an actual classification. Instead, it's a code that DPT uses to identify homes on agricultural lands.

The issue of pleasure horses was also discussed at length. Pleasure horses do not fit the definition of 'Livestock' . As such, owners of pleasure horses alone cannot receive the agricultural classification because they are not considered a ranch. (A ranch means ' a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit')

Agriculture Perspective

Alan Foutz, Tim Canterbury, Kent Peppler and Gene Pielan gave a power point presentation which cited data regarding agricultural operations in the state. They explained that to farmers and ranchers,

property taxes are a fixed cost. And unlike other businesses, farmers and ranchers can't pass off these fixed costs to customers. They explained that the taskforce must be cautious of the unintended consequences of any decisions/recommendations. It was also stated that agricultural rules need to be standardized so that all the assessors are consistent with their approaches and interpretations.

Commissioner Perspective

Frank Weddig and Hap Channell reiterated their desire to protect legitimate agricultural users. They explained that there is abuse in the system and from a fairness perspective, these abuses must be addressed.

Assessors Perspective

Brad Hughes and Ken Hood gave the assessor's perspective. Assessors want clear statutory language. There isn't uniformity among assessors and they wish to have better – possibly stricter – guidelines to follow. From the assessor's standpoint, there are two issues that need to be addressed: 1.) agricultural properties with residences and 2.) vacant parcels

Task Force Discussion and Identification of the Scope of Work

Task force members agreed to look at the following issues:

a.) Mixed use properties - classification for lands that are used for multiple purposes...usually a residential/agricultural use issue.
b.) Vacant/Residential Class – perhaps explore an 'in-between class' so you don't just go from vacant to residential
c.) Pleasure Horses
d.) Primary purpose vs. incidental agriculture – perhaps state with the definition for residential as opposed to the agricultural lands definition

Task force members will not address:

1.) Forest land (aka Forest Agriculture)
2.) Conservation Easements

Further discussion was had regarding what exactly the problem is. Assessors were asked to clearly state where the problems and abuses are. Task force members asked to have detailed examples around the state to better identify the problem and focus the discussion.

It was suggested that the current appeals process is sufficient to address problems. DPT explained that they are charged with providing consistent interpretations to the statutes and that the problem with the appeals process is that there is so much ambiguity. Judicial districts around the state hear these appeals and this leads to inconsistencies in rulings, interpretations and decisions.

The next meetings of the task force are as follows. All meetings will be held at CCI. (Lunch will not be served)

Thursday, July 29th	12:30 – 4:30
Wednesday, August 18th	12:30 – 4:30
Wednesday, September 8th	12:30 – 4:30

Colorado Constitution, Article X, section 3...states in part;

...the actual value of agricultural lands, as defined by law, shall be determined solely by consideration of the earning or productive capacity of such lands capitalized at a rate as prescribed by law.

§ 39-1-102, C.R.S.

A. STATUTORY DEFINITIONS

1. Agricultural land:

(1.6)(a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(I) 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 subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. "Agricultural land" under this subparagraph (I) includes land underlying any residential improvement located on such agricultural land and also includes the land underlying other improvements if such improvements are an integral part of the farm or ranch and if such other improvements and the land area dedicated to such other improvements are typically used as an ancillary part of the operation. The use of a portion of such land for hunting, fishing, or other wildlife purposes, for monetary profit or otherwise, shall not affect the classification of agricultural land. For purposes of this subparagraph (I), a parcel of land shall be "in the process of being restored through conservation practices" if: The land has been placed in a conservation reserve program established by the natural resource conservation service pursuant to 7 U.S.C. secs. 1 to 5506; or a conservation plan approved by the appropriate conservation district has been implemented for the land for up to a period of ten crop years as if the land has been placed in such a conservation reserve program.

2. Farm:
(3.5) "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.

   a. Agricultural and livestock products:
   (1.1) "Agricultural and livestock products" means plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product...

   b. Agriculture:
   "Agriculture", for the purposes of this subsection (1.1), means farming, ranching, animal husbandry and horticulture.

3. Ranch:
(13.5) "Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit.

   a. Livestock:
   For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft or profit.

4. Forest land:
(1.6)(a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(II) A parcel of land that consists of at least forty acres, that is forest land, that is used to produce tangible wood products that originate from the productivity of such land for the primary purpose of obtaining a monetary profit, that is subject to a forest management plan, and that is not a farm or ranch, as defined in subsection (3.5) and (13.5) of this section. "Agricultural land" under this subparagraph (II) includes land underlying any residential improvement located on such agricultural land.

   a. Statutory Description:
   (4.3) "Forest land" means land of which at least ten percent is stocked by forest trees of any size and includes land that formerly had such tree cover and that will be naturally or artificially regenerated. "Forest land" includes roadside, streamside, and shelterbelt strips of timber which have a crown width of at least one hundred twenty feet. "Forest land" includes unimproved roads and trails, streams, and clearings which are less than one hundred twenty feet wide.

b. Forest Management Plan:
(4.4) "Forest management plan" means an agreement which includes a plan to aid the owner of forest land in increasing the health, vigor, and beauty of such forest land through use of forest management practices and which has been either executed between the owner of forest land and the Colorado state forest service or executed between the owner of forest land and a professional forester and has been reviewed and has received a favorable recommendation from the Colorado state forest service. The Colorado forest service shall annually inspect each parcel of land subject to a forest management plan to determine if the terms and conditions of such plan are being complied with and shall report by March 1 of each year to the assessor in each affected county the legal descriptions of the properties and the names of their owners that are eligible for the agricultural classification. The report shall also contain the legal descriptions of those properties and the names of their owners that no longer qualify for the agricultural classification because of noncompliance with their forest management plans. No property shall be entitled to the agricultural classification unless the legal description and the name of the owner appear on the report submitted by the Colorado state forest service.
The Colorado state forest service shall charge a fee for the inspection of each parcel of land in such amount for the reasonable costs incurred by the Colorado state forest service in conducting such inspections. Such fee shall be paid by the owner of such land prior to such inspection. Any fee collected pursuant to this subsection (4.4) shall be subject to annual appropriation by the general assembly.

c. Forest Management Practices:
(4.5) "Forest management practices" mean practices accepted by professional foresters which control forest establishment, composition, density, and growth for the purpose of producing forest products and associated amenities following sound business methods and technical forestry principles.

d. Forest Trees:
(4.6) "Forest trees" means woody plants which have a well-developed stem or stems, which are usually more than twelve feet in height at maturity, and which have a generally well-defined crown.

e. Professional Forester:
(12.5) "Professional forester" means any person who has received a bachelor's or higher degree from an accredited school of forestry.

5. Conservation easements:
(1.6)(a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(III) A parcel of land that consists of at least eighty acres, or of less than eighty acres if such parcel does not contain any residential improvements, and that is subject to a perpetual conservation easement, if such land was classified by the assessor as agricultural land under subparagraph (I) or (II) of this paragraph (a) at the time such easement was granted, if the grant of the easement was to a qualified organization, if the easement was granted exclusively for conservation purposes, and if all current and contemplated future uses of the land are described in the conservation easement. "Agricultural land" under this subparagraph (III) does not include any portion of such land that is actually used for nonagricultural commercial or **NONAGRICULTURAL** residential purposes.

a. Conservation Purpose
(3.2) "Conservation purpose" means any of the following purposes as set forth in section 170 (h) of the federal "Internal Revenue Code of 1986", as amended:

(a) The preservation of land areas for outdoor recreation, the education of the public, or the protection of a relatively natural habitat for fish, wildlife, plants, or similar ecosystems; or
(b) The preservation of open space, including farmland and forest land, where such preservation is for the scenic enjoyment of the public or is pursuant to a clearly delineated federal, state, or local government conservation policy and where such preservation will yield a significant public benefit.

b. Perpetual conservation easement:
(8.7) "Perpetual conservation easement" means a conservation easement in gross, as described in article 30.5 of title 38, C.R.S., that qualifies as a perpetual conservation restriction pursuant to section 170 (h) of the federal "Internal Revenue Code of 1986", as amended, and any regulations issued thereunder.

c. Qualified organization:
(13.2) "Qualified organization" means a qualified organization as defined in section 170 (h) (3) of the federal "Internal Revenue Code of 1986", as amended.

§ 39-1-103, C.R.S.

d. Actual Value Determined:
(5)(a)...The actual value of agricultural lands, exclusive of building improvements thereon, shall be determined by consideration of the earning or productive capacity of such lands during a reasonable period of time, capitalized at a rate of thirteen percent. Land that is valued as agricultural and that becomes subject to a perpetual conservation easement shall continue to be valued as agricultural notwithstanding its dedication for conservation purposes; except that, if any portion of such land is actually used for nonagricultural commercial or **NONAGRICULTURAL** residential purposes, that portion shall be valued according to such use...

e. Retroactive reassessment:
(5)(d) If a parcel of land is classified as agricultural land as defined in section § 39-1-102 (1.6)(a)(III) and the perpetual conservation easement is terminated, violated, or substantially modified so that the easement is no longer granted exclusively for conservation purposes, the assessor may reassess the land retroactively for a period of seven years and the additional taxes, if any, that would have been levied on the land during the seven year period prior to the termination, violation, or modification shall become due.

§ 39-1-102, C.R.S.

6. Decreed Water Right:
(1.6)(a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(IV) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, 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 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., 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.

7. Reclassified Land:
(1.6)(a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(V) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, that has been reclassified from agricultural land to a classification other than agricultural land and that met the definition of agricultural land as set forth in subparagraphs (I) to (IV) of this paragraph (a) during the three years before the year of assessment. For purposes of this subparagraph (V), the parcel of land need not have been classified or eligible for classification as agricultural land during the ten years preceding the year of assessment as required by subparagraph (I) of this paragraph (a).

SUPREME COURT CASES....

MDC and EDITH CLARKE

NOTES:

DOUGLAS COUNTY BOARD OF EQUALIZATION, Petitioner,

v.

Edith CLARKE and Board of Assessment Appeals of the State of Colorado, Respondents.

DOUGLAS COUNTY BOARD OF COMMISSIONERS, Petitioner,

v.

MISSION VIEJO BUSINESS PROPERTIES and Board of Assessment Appeals of the State of Colorado, Respondents.

Nos. 95SC45, 95SC398.

Supreme Court of Colorado, En Banc.

June 24, 1996.

As Modified on Denial of Rehearing Aug. 19, 1996.

In separate cases, taxpayers challenged reclassification of land for ad valorem tax purposes. In each case, the Board of Assessment Appeals (BAA) classified property as agricultural, and the Court of Appeals affirmed, 899 P.2d 240. County boards petitioned for certiorari. The Supreme Court, Kourlis, J., held that for piece of land to qualify as agricultural land, taxpayer must prove that land was actually grazed during tax years in question unless reason land was not grazed related to conservation practice, or land is part of larger functional agricultural unit on which grazing or conservation practices have been occurring.

Reversed and remanded with directions.

1. Taxation ⇐348.1(3)

For piece of land to qualify as "agricultural land" subject to favorable ad valorem tax treatment, taxpayer must prove that land was actually grazed during tax years in question unless reason land was not grazed related to conservation practice, or land is part of larger functional agricultural unit on which grazing or conservation practices have been occurring. West's C.R.S.A. § 39–1–102(1.6)(a)(I), (13.5).

See publication Words and Phrases for other judicial constructions and definitions.

2. Statutes ⇐219(4)

Although interpretation of statute by agency charged with its administration is entitled to deference, reviewing court is not bound by that interpretation where it is inconsistent with clear language of statute or with legislative intent.

3. Statutes ⇐212.3

Court must presume that legislature intended statute to have a just and reasonable result.

4. Taxation ⇐348.1(3)

Under statutes defining agricultural land subject to favorable ad valorem tax treatment, term "parcel" refers to contiguous body of land. West's C.R.S.A. § 39–1–102(1.6)(a)(I), (13.5).

See publication Words and Phrases for other judicial constructions and definitions.

5. Taxation ⇐348.1(3)

Initial question that Board of Assessment Appeals (BAA) must consider in reviewing county assessor's classification of piece of land as agricultural under ad valorem tax scheme is whether it is segregated parcel that should be treated as single unit, or whether it is part of integrated larger parcel, which determination is factual one, controlled by whether land is sufficiently contiguous to and connected by use with other land to qualify it as part of larger unit or whether parcel has been segregated by geography or type of use from balance of unit. West's C.R.S.A. § 39–1–102(1.6)(a)(I), (13.5).

6. Taxation ⇐348.1(3)

In defining "functional parcel," for purpose of determining whether piece of land is agricultural under ad valorem tax scheme, Board of Assessment Appeals (BAA) should take into account physical characteristics of rancher's property, such as location of natural boundaries like rivers or bluffs and location of man-made boundaries like fences, as

well as use of property as it either integrates or conflicts with use of larger unit.

7. Taxation ⇐348.1(3)

For piece of land to be "used for grazing," as required for it to qualify as agricultural land subject to favorable ad valorem tax treatment, livestock must actually graze on the land; taxpayer's intent to use land for grazing is not enough. West's C.R.S.A. § 39–1–102(1.6)(a)(I), (13.5).

See publication Words and Phrases for other judicial constructions and definitions.

8. Taxation ⇐348.1(3)

Taxpayer is not required to prove that professionally prepared conservation plan is in place for land being restored through conservation practices to qualify as agricultural land, subject to favorable ad valorem tax treatment, despite lack of current grazing use. West's C.R.S.A. § 39–1–102(1.6)(a)(I), (13.5).

Thomas W. McNish, Assistant County Attorney, Office of Douglas County Attorney, Castle Rock, for Douglas County Board of Commissioners and Douglas County Bd. of Equalization.

Downey & Knickerrehm, P.C., Thomas E. Downey, Jr., Henry J. Rickelman, Denver, for Mission Viejo Business Properties.

Gale A. Norton, Attorney General, Stephen K. ErkenBrack, Chief Deputy Attorney General, Timothy M. Tymkovich, Solicitor General, Maurice Knaizer, Deputy Atty. Gen., Larry A. Williams, First Asst. Atty. Gen., Mark W. Gerganoff, Assistant Attorney General, General Legal Services Section, Denver, for Board of Assessment Appeals.

Holland & Hart, Alan Poe, Mary D. Metzger, Englewood, for Edith Clarke.

Justice KOURLIS delivered the Opinion of the Court.

We granted certiorari in two related cases, *Clarke v. Douglas County Board of Equalization*, 899 P.2d 240 (Colo.App.1994), and *Douglas County Board of Commissioners v. Mission Viejo Business Properties*, No. 93CA2115 (Colo.App. April 20, 1995) (not selected for official publication), to determine whether the definition of "agricultural land" for *ad valorem* taxation purposes in section 39–1–102(1.6)(a)(I), 16B C.R.S. (1994), requires that actual grazing take place in the tax year in question and in the prior two years.[1]

We conclude that the plain meaning of the statute requires the taxpayer to prove that the land was actually grazed unless (1) the reason the land was not grazed related to a conservation practice; or (2) the land is part of a larger functional agricultural unit on which grazing or conservation practices have been occurring. Because we are unclear as to the basis for the Board of Assessment Appeals' (BAA) conclusions that the taxable land here at issue was agricultural, we reverse and remand to the court of appeals with directions to return the cases to the BAA for additional findings and conclusions consistent with the standards set out in this opinion.

I.

A. Clarke Property

The two cases implicate the same legal principle but different facts. We first address the *Clarke* case, which involves a 23.7 acre parcel of land now located within the Town of Parker. The record before the BAA indicates that the Clarke family purchased the 23.7 acre parcel in 1951 as part of a much larger unit and used the entire tract for farming and ranching for almost forty years. In 1990, Edith Clarke sold a portion to a third party for use as a manufacturing and distribution facility. At that time, the 23.7 acre parcel here at issue, which was adjacent to the portion that had been sold, was subdivided into a lot known as Lot 2, Block 1 Clarke I C.P.F. Commercial Addition Filing # 1 (hereinafter "Lot 2").

1. Because these cases raise the same issue, we consolidated them for purposes of briefing and oral argument before the Supreme Court.

In 1990, Clarke leased Lot 2 together with other property to Martin Cockriel who operated a horse and cattle business. The only income to Clarke from Lot 2 was the rental income from Cockriel. In tax years 1991 and 1992, the Douglas County Assessor reclassified Lot 2 from agricultural to commercial vacant land. Clarke appealed the Assessor's 1992 classification [2] to the BAA.

At the hearing, the evidence was undisputed that Lot 2 was not used for grazing livestock in 1991, in part because of unavailability of water. During 1991, Lot 2 was used only as a polo field. In 1992, Cockriel began to use Lot 2 for grazing in conjunction with other adjacent property to the north that he had leased from a third party on which water was available. During 1992, Cockriel grazed approximately fifteen to eighteen head of horses on Lot 2.

The BAA concluded that the 1992 classification of the subject property should be restored to agricultural. The BAA stated:

> After careful consideration of all of the evidence and testimony presented, the Board determined that the classification of the subject property was improper. Petitioner has a lease for the subject property, evidence indicating that there was grazing on the subject property in 1992. The lessee has leased this property and other properties to obtain a monetary profit. There are times in a farming and ranching operation that some portion of a farm or ranch will not be used for grazing in a particular year. Most operators have excess pasture to be prepared for the changes in weather and seasons.

The Douglas County Board of Equalization appealed the BAA's ruling to the court of appeals and the court of appeals affirmed. *See Clarke v. Douglas County Bd. of Equalization*, 899 P.2d 240 (Colo.App.1994).

B. Mission Viejo Property

In 1987, Mission Viejo Business Properties (Mission Viejo) purchased 21,437 acres of land from the Phipps family, who had operated it as a ranch. Mission Viejo continued to ranch the land under the auspices of Sand Creek Cattle until 1987. At that time, Mission Viejo entered into a grazing lease with LEI Farms. Initially, the lease did not specifically include the four parcels that are the subject of this action; however, in 1990, the lease was amended to include them. The earlier version of the lease did refer to all undeveloped land owned by Mission Viejo, and there was evidence before the BAA that the parties had intended to include the four parcels.

The four parcels are variously described as: Filing 57A, Lots 2–6 (Docket No. 23670) consisting of five platted lots totalling 22.098 acres (Parcel 1); Filing 26, Lot 3 (Docket No. 23671) consisting of one platted 10 acre lot (Parcel 2); Parcel 0328429 (Docket No. 23672) consisting of one unplatted 8.1 acre parcel adjacent to Lot 3 in Filing 26 (Parcel 3); and Filing 20, lots 2–11 (Docket No. 23673) consisting of ten platted lots totalling 27.45 acres (Parcel 4). The parcels are scattered throughout northern Douglas County and the record reflects that each parcel is bounded by at least two roads.

The evidence in the record indicates that in 1987 and 1988, no grazing occurred on Parcels 2 and 3, and that in 1988 no grazing took place on Parcel 1. In 1989, grazing did occur on those parcels. There was further evidence that Parcel 4 was grazed in both 1988 and 1989, but the evidence as to 1987 is unclear. In 1989, the Douglas County assessor reclassified the four parcels as commercial vacant land. Mission Viejo filed an unsuccessful petition for abatement or refund of taxes based on the 1989 classification and then sought recourse before the BAA.

After a hearing, the BAA concluded that the parcels should have retained their agricultural classification. The BAA stated:

> After careful consideration of all testimony and evidence presented, the Board determined the subject properties should be classified agriculture for 1989. The Board determined the operation of the ranch was continued with the lease to Mr. Bob Walk-

2. She also filed a petition for abatement of taxes based on the 1991 classification, which is not here at issue.

er [LEI Farms] in October 1987. The evidence indicates the parcels were used or could have been used in the normal operation of the ranch. The evidence indicated there has been a plan in place, as the property is developed, fences are built or removed by the developer in order to utilize the fenced property as part of the ranch. The fences are then maintained by the lessee.

The Douglas County Board of Commissioners appealed the BAA's ruling to the court of appeals and the court of appeals affirmed. *See Douglas County Bd. of Comm'rs v. Mission Viejo Business Properties,* No. 93CA2115 (Colo.App. April 20, 1995) (not selected for official publication).

C.

The Douglas County Board of Equalization and the Douglas County Board of Commissioners (collectively "Douglas County") petitioned for certiorari review in their respective cases. We granted certiorari to determine:

> Whether the definition of "agricultural land" for *ad valorem* tax purposes in section 39–1–102(1.6)(a)(I), 16B C.R.S. (1994), requires that actual grazing take place in the tax year in question and in the prior two years.[3]

We now hold that section 39–1–102(1.6)(a)(I), 16B C.R.S. (1994), requires that the parcel of land in question actually be used in conjunction with grazing of livestock. This requires either that actual grazing take place in the tax years in question unless the reason for the non-use relates to conservation of the land or the parcel is part of a larger unit on which grazing or conservation is occurring. In the *Clarke* case, the BAA found that grazing did not take place in each year; however, its findings could be read to indicate that the reason for the non-use was somehow related to conservation. Similarly, in the *Mission Viejo* case, we cannot determine whether either of the necessary criterion have been met, thus, we reverse the decision of the BAA and the court of appeals. We remand the case to the court of appeals with directions to return the case to the BAA for further fact-finding under the guidelines set forth in this opinion.

II.

[1] Agricultural land in Colorado receives favorable *ad valorem* tax treatment, calculated on the basis of the earning or productive capacity of the land. *See* Colo. Const. art. X, § 3; § 39–1–103(5)(a), 16B C.R.S. (1994). Therefore, classification of property as agricultural is a benefit that was carved out to encourage and to protect ongoing agricultural use.[4] Our task in the cases before the court is to construe the statutes framing and defining that tax classification.

Specifically, we are called upon to determine the meaning of the two statutes that govern this issue. The first is section 39–1–102(1.6)(a)(I), which provides in pertinent part:

> (1.6) (a) "Agricultural land" means either of the following:
>
> (I) A parcel of land ... regardless of the uses for which such land is zoned, which was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, and the gross income resulting from such use equals or exceeds one-third

3. Our grant of certiorari in the *Mission Viejo* case referred to the 1987 version of section 39–1–102(1.6)(a)(I). *See* 39–1–102(1.6)(a)(I), 16B C.R.S. (1987 Supp.). The legislature amended the 1987 version of section 39–1–102(1.6)(a)(I) in 1990. *See* ch. 277, secs. 16, 37, § 39–1–102, 1990 Colo.Sess.Laws 1687, 1695, 1703. Because the amendment does not affect the issues involved in this case, for clarity, we refer throughout this opinion to the present version of the statute printed in the 1994 replacement volume to the Colorado Revised Statutes.

4. During the hearings on implementing legislation for Article X, section 3 of the Colorado Constitution, the legislators emphasized that the purpose of the favorable tax treatment for agricultural land was recognition of a social policy in favor of maintaining affordable food prices. *See* Hearings on S.B. 6 Before Senate Finance Committee, 54th Gen. Assembly, 1st Sess., March 3, 1983, Audio Tape No. 83–11; Hearings on S.B. 6 Before House Finance Committee, 54th Gen. Assembly, 1st Sess., April 18, 1983, Audio Tape No. 83–22. As such, the statutes implementing the agricultural tax provision of article X, section 3 should be construed in light of this purpose.

> of the total gross income resulting from all uses of the property during any given property tax year, or which is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have *actual agricultural use*..

§ 39–1–102(1.6)(a)(I), 16B C.R.S. (1994) (emphasis added). The second governing statutory provision is section 39–1–102(13.5), 16B C.R.S. (1994), which defines a "Ranch" as a "parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit."

In both the *Clarke* and *Mission Viejo* cases, the taxpayers argue for a broad interpretation of sections 39–1–102(1.6)(a)(I) and (13.5). The taxpayers claim that a narrow construction of these sections, requiring actual grazing on each parcel of land annually, would be too limiting. Douglas County argues that actual agricultural use of a parcel of land means that actual grazing must take place on every parcel every year.

The BAA ruled in both cases that a taxpayer does not have to have actual grazing on every parcel of property every year. In the *Clarke* case, the BAA found that the lack of actual grazing during one year was not dispositive, in that "(t)here are times in a farming and ranching operation that some portion of a farm or ranch will not be used for grazing in a particular year." In the *Mission Viejo* case, the BAA found that the "parcels were used or could have been used in the normal operation of the ranch" and were therefore eligible for agricultural classification. The court of appeals affirmed the BAA's determination in both cases.[5]

[2] Although the interpretation of a statute by an agency charged with its administration, such as the BAA, is entitled to deference, a reviewing court is not bound by that interpretation where it is inconsistent with the clear language of the statute or with legislative intent. *Huddleston v. Grand County Bd. of Equalization*, 913 P.2d 15, 17 (Colo.1996); *Boulder County Bd. of Equalization v. M.D.C. Constr. Co.*, 830 P.2d 975, 981 (Colo.1992).

[3] Because this case turns on interpretation of sections 39–1–102(1.6) and (13.5), we must first look to the plain language of the statute to determine its import. *Bertrand v. Board of County Comm'rs*, 872 P.2d 223, 228 (Colo.1994). Furthermore, we must presume that the legislature intended the statute to have a just and reasonable result. *State Eng'r v. Castle Meadows, Inc.*, 856 P.2d 496, 504 (Colo.1993).

A.

In order for a piece of land to be classified as agricultural land for *ad valorem* tax purposes, section 39–1–102(1.6)(a)(I), 16B C.R.S. (1994), requires that it be a "parcel of land ... used as a farm or ranch or be in the process of being restored through conservation practices" in both the prior two tax years and the tax year at issue. Section 39–1–102(13.5), 16B C.R.S. (1994), defines a ranch as a "parcel of land used for grazing livestock for the primary purpose of obtaining a monetary profit."

The three questions that arise when construing these statutes are: the meaning of "parcel," the meaning of "agricultural use" and the meaning of "conservation practices."

[4] We first address the use of the word "parcel" in the statute. In section 39–1–102(13.5), a ranch is itself defined as a "parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit." The *Land Valuation Manual*,

5. In both *Mission Viejo* and *Clarke*, the court of appeals indicated that the determination of what constitutes agricultural use is a factual one to be made by the BAA on the basis of all the evidence presented at the hearing. *See Mission Viejo*, No. 93CA2115, slip op. at 3; *Clarke*, 899 P.2d at 243. Whether a party's use of the property constitutes actual agricultural use is primarily a factual question. However, an interpretation of what the legislature intended when it required agricultural use in order for the property to be classified as agricultural for tax purposes is a question of law for the courts to decide. *See Boulder County Bd. of Equalization v. M.D.C. Constr. Co.*, 830 P.2d 975, 981 (Colo.1992).

produced by the Division of Property Taxation and relied upon by assessors, concludes that the term "parcel" means "a defined area of real estate." 3 *Assessor's Reference Library: Land Valuation Manual* 10.2 (Rev.1/95). Section 30–28–302, 12A C.R.S. (1995 Supp.), which pertains to substitution of a subdivision plat for a description of a parcel in the county records, defines the term parcel as: "a contiguous land area except for intervening easements and rights of way with a continuous boundary defined by either the methods specified in subsection (2) of this section when the description of the parcel has been recorded in the office of the county clerk and recorder or by reference to a recorded subdivision plat." These sources suggest that the term parcel refers to a contiguous body of land. Case law from other jurisdictions provides further support for the conclusion that a parcel is generally defined as a contiguous body of land.[6]

[5, 6] Thus, the initial question that the BAA[7] must consider in reviewing a county assessor's classification of a piece of land as agricultural is whether it is a segregated parcel that should be treated as a single unit; or whether it is part of an integrated larger parcel. We conclude that this determination is a factual one, controlled by whether the land is sufficiently contiguous to and connected by use with other land to qualify it as part of a larger unit or whether it is a parcel segregated by geography or type of use from the balance of the unit. In defining the "functional parcel"[8] for this purpose, the BAA should take into account the physical characteristics of the rancher's property such as the location of natural boundaries like rivers or bluffs and the location of man-made boundaries like fences. The BAA should also take into account the use of the property as it either integrates or conflicts with the use of the larger unit. For example, if the land being assessed is part of a fenced pasture, the whole pasture should be viewed as the functional unit. On the other hand, we do not read the statute to permit an entire ranch consisting of numerous contiguous and non-contiguous pieces of land, to be classified as one "parcel" for purposes of this analysis.[9]

In the cases before us, Mission Viejo appears to have made an argument that the pieces of land at issue were used as a part of a larger agricultural "parcel"; however, the BAA made no findings as to whether that

6. *See Adams Tree Serv., Inc. v. Transamerica Title Ins. Co.*, 20 Ariz.App. 214, 511 P.2d 658 (1973) (interpreting mechanics lien statute that included the word parcel; parcel means contiguous quantity of land in possession of, owned by, or recorded as property of the same claimant, person or company); *Floral Hills Memory Gardens, Inc. v. Robb*, 227 Ga. 470, 181 S.E.2d 373 (1971) (interpreting term parcel of land in a deed and holding that such term does not reference size rather it refers to a contiguous quantity of land); *Board of Envtl. Protection v. Bergeron*, 434 A.2d 25 (Me. 1981) (determination of whether two pieces of land bisected by a road constituted one parcel depended on amount of integration between pieces of land which fell on opposite side of road, as well as past use, and present suitability for large-scale integrated development); *State ex rel. Symms v. City of Mountain Home*, 94 Idaho 528, 493 P.2d 387 (1972) (parcel means a consolidated body of land; whether two pieces of land constitute a single parcel is a question for the jury and depends on the use and appearance of the land, its legal subdivision, and the intent of the owner).

7. Throughout this opinion, we refer to the BAA as the decision-making body. We recognize that on an ongoing basis, the county assessor must classify the land for tax purposes and will be required to apply the criteria set forth in this opinion.

8. If the taxpayer contends that the parcel should be analyzed as part of a larger functional unit, the burden would be upon that taxpayer to present evidence to that effect. *See Gyurman v. Weld County Bd. of Equalization*, 851 P.2d 307, 310 (Colo.App.1993).

9. As indicated, contiguity need not be absolute, and may exist irrespective of intervening roads, easements or natural intrusions. However, we recognize that our interpretation of §39-1-102(1.6) and (13.5) precludes agricultural classification for truly non-contiguous parcels on which there is no grazing or conservation practice, but which might nevertheless serve a legitimate ranching purpose such as equipment storage. We read the language of the statute as clear and unambiguous. Therefore, it must be applied as written. *Dunton v. People*, 898 P.2d 571, 573 (Colo. 1995). Such an application leads to the inescapable result that a parcel of land must be grazed or used for conservation purposes to qualify for agricultural classification. How the assessor defines the parcel to be analyzed under that standard is a question of fact, governed by principles identified in this opinion.

testimony played a role in its ultimate conclusion that the pieces of land were agricultural nor did it make any findings as to the boundaries of the unit. In the *Clarke* case, the only reference to a larger "parcel" related to the Cockriel lease, and there was no testimony that Cockriel was using the contested piece of land in conjunction with other ranching property owned by Clarke.

We conclude that the appropriate first step in these cases on remand to the BAA is for the BAA to define the boundaries of the piece of land being classified—whether it is a free-standing "parcel" or is part of a larger agricultural "parcel"—based upon the criteria set forth herein. Once the "functional parcel" has been defined the BAA must determine whether the taxpayer is putting that parcel to an actual agricultural use.

[7] We turn then to the definition of actual "agricultural use." Clearly, the statutes require that in order for land to be classified as a ranch, the land must be used for grazing livestock.[10] Furthermore, the plain meaning of the phrase "used for grazing" is that livestock actually graze on the land.

We find no indication in the statutory text of sections 39–1–102(1.6) and (13.5) to indicate that the legislature intended to broaden the meaning of the phrase "use for grazing" to include parcels that the taxpayer intended to use for grazing, but did not. The taxpayer's subjective intent to use the land is not relevant for *ad valorem* tax classification purposes. *See Boulder County Bd. of Equalization v. M.D.C. Constr. Co.*, 830 P.2d 975, 981 (Colo.1992)(holding that a landowner's intent to develop the land in the future had no bearing on classification of the land as agricultural). Rather, the actual surface use of the land must be the focus of any classification of agricultural land for property tax assessment purposes. *See id.; Estes v. Board of Assessment Appeals*, 805 P.2d 1174, 1175 (Colo.App.1990). We therefore conclude that there must be actual grazing on the parcel, as defined in functional terms, during each relevant tax year to qualify for agricultural classification unless the land is subject to non-use for conservation purposes.[11]

[8] Lastly, we turn to the legislature's inclusion of conservation practices as an exception to the actual agricultural use requirement. The legislature did anticipate that a taxpayer would not necessarily graze every parcel in every year. Thus, it provided for an exception in section 39–1–102(1.6)(a)(I) for land "which is in the process of being restored through conservation practices." Douglas County argues that in order to qualify for this exception the taxpayer must prove that a professionally prepared conservation plan is in place. We do not interpret the statute so narrowly.

As discussed above, section 39–1–102(1.6)(a)(I) makes reference to land that is in the process of being restored through conservation practices. The statute makes no mention of a professionally prepared conservation plan and we do not interpret it to require one.[12] Rather, we interpret the statute to require the taxpayer to prove that the non-use was reasonably related to the overall grazing operation—such as deferred use as part of a grazing rotation plan; such as protecting the land to enhance productivity of forage for future grazing needs; or such as reseeding and fertilization. The non-use must be both purposeful and an integral part of the grazing operation. Neglect by the

10. A parcel may also qualify for an agricultural classification if it is used as a farm pursuant to § 39–1–102(3.5), 16B C.R.S. (1994). As neither party in this case is arguing that they used their property as a farm, we do not consider this kind of agricultural use within this opinion.

11. We do note that once animals are released into a pasture, they may not graze every acre of that pasture, through no fault of the landowner or lessee. It is enough, therefore, that the animals have access to the pasture for grazing use. This observation is more relevant to the threshold determination of what constitutes the "parcel" for purposes of classification analysis, in that the assessor may determine that the agricultural "parcel" is really the entire pasture. *See supra* p. 12–14.

12. Although not necessary, a professionally developed conservation plan would clearly constitute evidence that the land was being restored through conservation practices. *See* 3 *Assessor's Reference Library: Land Valuation Manual* 5.43 (Rev.1/95).

landowner or lessee or basic unsuitability of the land for grazing will not suffice.

B.

In conclusion, we hold that in order for a parcel to qualify for an agricultural tax classification pursuant to sections 39–1–102(1.6) and (13.5), the taxpayer must prove that the functional parcel was actually grazed unless it was purposefully not grazed for conservation reasons as part of an integrated grazing operation.

III.

We are unable to apply those factors to the BAA findings in the cases before us. In the *Clarke* case, the evidence clearly indicates that no grazing took place on Lot 2 during calendar year 1991. The parcel was not left idle as a conservation practice, but rather because of unavailability of water. When Martin Cockriel leased property to the north of Lot 2 which provided access to water, he began grazing Lot 2 with his horses. It would thus appear that the property was not put to the required actual agricultural use, and no legitimate conservation reason was offered for that omission. However, we cannot determine whether the BAA considered the land as a part of a larger agricultural unit on which actual agricultural use was occurring and arrived at its classification accordingly. The BAA does hold that there was a "farming and ranching operation" and that "most operators have excess pasture to be prepared for the changes in weather and seasons" however, those findings are not sufficiently explicit to justify a conclusion that the land was truly part of a larger unit [13] that was being grazed or was part of a conservation effort. Accordingly, we reverse and remand the *Clarke* case to the court of appeals with directions to return the case to the BAA for further findings.

Classification of the *Mission Viejo* property is similarly difficult to evaluate on the record. There was evidence that Parcel 4 was grazed in 1988 and 1989, but no clear evidence that it was grazed in 1987. As to Parcels 1, 2, and 3 grazing did not occur as required in each successive relevant tax year.[14] Mission Viejo provided no proof that the use of these parcels was deferred for conservation purposes as part of an overall grazing plan. Rather, the testimony suggested that the parcels were not grazed due to mere inadvertence. The BAA finding that the parcels "could have been used for grazing" indicates only that the property was available for grazing in the relevant tax years but does not establish the reason for the non-use of the parcels. Because the record is unclear on this point, we cannot make a determination as to whether the parcels were part of a conservation practice that entailed non-use. Additionally, we are unable to determine whether the BAA viewed any of the parcels as part of a larger functional unit for classification purposes. We therefore, remand to the court of appeals with directions to return the case to the BAA for rehearing to determine whether the parcels at issue were not grazed for conservation purposes.

IV.

In conclusion, we hold that in order to qualify for agricultural tax treatment pursuant to sections 39–1–102(1.6)(a)(I) and (13.5), 16B C.R.S. (1994), the taxpayer must prove that actual grazing of the parcel took place in the applicable tax year unless the reason the land was not grazed related to a conservation practice; or unless the land in question is part of a larger agricultural unit on which grazing or conservation practices have occurred during the relevant tax years. Therefore, we reverse the decisions of the BAA and the court of appeals. We remand the cases to the court of appeals with directions to return them to the BAA for further hearing to determine whether these parcels are

13. The BAA should look both to location and use of the parcel to determine whether it was functionally integrated into a larger unit.

14. We do not find the fact that Mission Viejo originally omitted the subject properties from its grazing lease with LEI farms to be dispositive. Not only was the omission corrected, but more importantly as explained above, it is the actual surface use of the property that must be the focus of an agricultural land classification inquiry.

eligible for agricultural classification under the guidelines set forth in this opinion.

HOBBS, J., does not participate.

The PEOPLE of the State of Colorado, Complainant,

v.

Thomas T. JAMROZEK, Attorney–Respondent.

No. 96SA172.

Supreme Court of Colorado, En Banc.

July 29, 1996.

In attorney disciplinary proceeding, the Supreme Court held that order requiring previously disbarred attorney to make full restitution to financially injured clients and requiring him to pay costs of disciplinary proceeding was warranted for attorney's negligent handling of medical malpractice action, attorney's mishandling of criminal case, and attorney's failure to adequately communicate with clients in another action.

So ordered.

1. Attorney and Client ⇐60

Disbarred attorney remains subject to jurisdiction of Supreme Court and its grievance committee for his or her failure to comply with Code of Professional Responsibility and Rules of Professional Conduct while he or she practiced law. Rules Civ.Proc., Rule 241.1(b).

2. Attorney and Client ⇐58, 59

Order requiring attorney to make full restitution to financially injured clients and requiring him to pay costs of disciplinary proceeding was warranted for attorney's negligent handling of medical malpractice action, attorney's mishandling of criminal case, and attorney's failure to adequately communicate with clients in another action; attorney's conduct also would have warranted disbarment, but attorney had already been disbarred in prior disciplinary proceeding. Rules of Prof.Conduct, Rules 1.3, 1.4(a, b), 1.5(a), 1.15(b), 1.16, 8.4(c, d, g, h); Code of Prof. Resp., DR 6-101(A)(3).

Linda Donnelly, Disciplinary Counsel, Kenneth B. Pennywell, Assistant Disciplinary Counsel, Denver, for Complainant.

No Appearance by or on behalf of Attorney–Respondent.

PER CURIAM.

The respondent in this lawyer discipline proceeding was disbarred on April 8, 1996. *People v. Jamrozek*, 914 P.2d 350 (Colo.1996). Following the respondent's disbarment, this separate disciplinary proceeding was submitted to the court. A hearing panel of the supreme court grievance committee approved the findings and recommendation of the hearing board that the respondent be disbarred, pay restitution prior to any application for readmission, and be assessed the costs of the proceeding. The respondent defaulted before the grievance committee and has not appeared in this court. We approve the findings of the panel and board, and order that the respondent pay restitution prior to any application for readmission as set forth in the board's report, and pay the costs of the proceeding. We do not impose additional discipline since the respondent has already been disbarred for prior misconduct, although we agree that the respondent's violations of professional standards in this case independently support the panel's recommendation of disbarment.

I.

[1] The respondent was admitted to practice law in Colorado in 1986. Even though now disbarred, he remains subject to the jurisdiction of this court and its grievance committee for his failure to comply with the Code of Professional Responsibility and the

utes most to the public's understanding of the proposed initiated amendment. Thus, amending an original draft to reflect the legislative office's comments and/or recommendations can hardly be said to eradicate the public's understanding.

Finally, in addition to finding that the Board lacked jurisdiction, the majority agrees with the petitioners' argument that the reference to "statewide" regulation in the title and summary of the proposed measure as set by the Board "are inaccurate and misleading." The language of the initiative does not support the majority's conclusion that the proposed amendment "relate[s] to limited gaming operations only on property located in the city of Idaho Springs." Maj. op. at 969. Subsection (3) provides in relevant part that:

> [E]xcept for subsection 2(a), this section shall not affect, nor shall it be affected by, any other such section [which permits limited gaming].

Stated in positive terms, subsection 2(a) applies to any other section of the constitution authorizing limited gaming. Subsection 2(a), thus, permits the gaming commission to "approve any casino games and establish the maximum wager which shall not be less than five dollars" for all communities in which limited gaming is constitutionally allowed.

The Board correctly interpreted the proposed initiative. To convey the increased powers of the gaming commission, the Board inserted the following relevant language in the title:

> An amendment to Article XVIII of the Colorado Constitution ... to allow the limited gaming control commission to approve, statewide, any casino games and to establish a statewide maximum wager of at least five dollars....

The same language was included in the ballot title and submission clause and summary. *See* maj. op. at 965. The majority rejects the term "statewide" as misleading because the amendment "is intended to have only limited geographical application." Maj. op. at 970. In fact, that observation is not correct. The gaming commission is intended to exercise its regulatory authority on a statewide basis wherever limited gaming is permitted. "Statewide" is an appropriate, nonmisleading summary of the initiative. With appropriate deference to the Board's selection of language, *In re Limited Gaming in Manitou Springs*, 826 P.2d at 1245, I would uphold the inclusion of the term "statewide" in the title and summary.

For these reasons, I dissent.

ERICKSON and VOLLACK, JJ., join in this dissent.

BOULDER COUNTY BOARD OF EQUALIZATION, and the Colorado Board of Assessment Appeals, Petitioners,

v.

M.D.C. CONSTRUCTION COMPANY, Respondent.

No. 91SC293.

Supreme Court of Colorado, En Banc.

May 26, 1992.

Owner of leased property challenged county assessor's reclassification of property from "agricultural land" to "vacant land." The Board of Assessment Appeals determined that owner was not entitled to have land assessed as "agricultural land," and owner appealed. The Court of Appeals reversed, and certiorari was granted. The Supreme Court, Quinn, J., held that it was lessees' use of property for primary purpose of making profit from ranch operations, rather than owner's activities and intent in purchasing and maintaining land, that was determinative fact in qualifying property as "agricultural land."

Affirmed.

Lohr, J., filed dissenting opinion, in which Mullarkey, J., joined.

1. Taxation ⇐348.1(3)

Leased property qualified as "agricultural land" for purposes of real estate tax assessment, though lessor purchased and maintained property with eye toward development, where lessees used property for agricultural purposes with primary objective of making a profit; determinative factor was lessees' use of land rather than lessor's activities and intent in purchasing and maintaining land. West's C.R.S.A. § 39–1–102(1.6)(a); West's C.R.S.A. Const. Art. 10, § 3(1)(a).

See publication Words and Phrases for other judicial constructions and definitions.

2. Statutes ⇐181(1)

Court's responsibility is to construe and apply statute in accordance with legislative intent.

3. Statutes ⇐188

To determine legislative intent, court looks primarily to language of statute itself with view toward giving effect to statutory terminology in accordance with its commonly accepted meaning.

4. Statutes ⇐188

When statutory language is plain, it should not be subjected to strained or forced interpretation.

5. Taxation ⇐348.1(3)

To qualify as "agricultural land" under real estate tax assessment statute, land must be presently used as farm or ranch, must have been so used during two-year period prior to assessment, must have been classified or eligible for classification as "agricultural land" during ten years preceding assessment year, and must continue to have actual agricultural use. West's C.R.S.A. § 39–1–102(1.6).

6. Taxation ⇐348.1(3)

Surface use of land for monetary profit from agricultural activities, and not owner's plans or intent with respect to future development, is determinative factor in classification of land as "agricultural land" for property tax assessment purposes. West's C.R.S.A. § 39–1–102(1.6, 3.5, 13.5).

7. Taxation ⇐348.1(3)

In determining whether property qualifies as "agricultural land" for tax assessment purposes, there is no need to differentiate between lessee's primary purpose in using land and landowner's primary purpose in acquiring and maintaining ownership of land, nor is it necessary that landowner actually profit or intend to profit from agricultural operation on land conducted by owner's lessees; clear statutory standards should be applied as written and should not subject to interpretation incorporating factors not contained with statutory text. West's C.R.S.A. § 39–1–102.

8. Statutes ⇐219(4)

While construction of statute by agency charged with its enforcement is entitled to deference, courts are not bound by that construction where result reached by agency is inconsistent with legislative intent as manifested in statutory text.

H. Lawrence Hoyt, Ruth E. Cornfeld, Boulder, for Boulder County Bd. of Equalization.

Gale A. Norton, Atty. Gen., Raymond T. Slaughter, Chief Deputy Atty. Gen., Timothy M. Tymkovich, Sol. Gen., Thomas D. Fears, Asst. Atty. Gen., Denver, for Colorado Bd. of Assessment Appeals.

McGeady, Weston, & Sisneros, P.C., David H. Wollins, Michael A. Zahorik, Denver, for M.D.C. Const. Co.

Justice QUINN delivered the Opinion of the Court.

We granted certiorari to review the unpublished opinion of the court of appeals in *MDC Constr. Co. v. Board of Assessment Appeals* (Colo.App. No. 90CA0063, March 21, 1991), which reversed the Board of Assessment Appeals' determination that MDC, a landowner, was not entitled to have its land assessed for property tax purposes for the 1988 tax year as "agricultural land" under the then-existing version of section 39–1–102(1.6) and (13.5), 16B

C.R.S. (1987 Supp.). The Board of Assessment Appeals ruled that various activities of MDC with respect to the land, including its practice of leasing the land for grazing and ranch operations at a price that would not result in a monetary profit to MDC, were inconsistent with MDC's intent as landowner to engage in farming or ranching operations for the primary purpose of obtaining a profit. In reversing that decision, the court of appeals concluded that the critical factor qualifying MDC's land as "agricultural land" was the lessees' surface use of the land to graze animals for the purpose of making a profit. The Boulder County Board of Equalization and the Colorado Board of Assessment Appeals filed a petition for certiorari, which we granted,[1] and we now affirm the judgment of the court of appeals.

I.

The land in question consists of approximately 1200 acres, divided into a number of parcels, and is located within the incorporated boundaries of the Town of Superior in Boulder County. Most of the parcels are vacant land, with only five containing residential improvements. The land has been used for farming and ranching purposes since approximately 1942, and on January 6, 1987, it was annexed by the Town of Superior and zoned as a planned unit development for a variety of nonagricultural uses. Agricultural uses, however, were not prohibited by the Town of Superior.

At the time of the annexation the land was owned by Rock Creek Partnership, which agreed to provide a municipal water system to the Town of Superior and pledged its water rights to the town. In June 1987 MDC Construction (MDC), a landholding and development company, purchased the land from Rock Creek Partnership for $12,735,000, or approximately $10,500 per acre. MDC planned to develop the land at some future time, but in the interim intended to lease the land for farming and ranching operations. After purchasing the land from Rock Creek Partnership, MDC leased approximately 800 acres to Joseph Scriffiny and the remainder of the land to Regina Hobika. Both Scriffiny and Hobika were legitimate and bona fide rancher-farmers.

The Scriffiny lease provided for a $400 monthly payment, but Scriffiny was permitted to perform maintenance work on the land in lieu of payment. Scriffiny used approximately 240 acres as farm land on which he grew hay for winter feed, and he used the remaining 600 acres to graze his cattle, which numbered from 70 to 90. The primary purpose of Scriffiny's use of the land was to obtain a monetary profit, and Scriffiny in fact did make a profit from his agricultural operations for the years 1986, 1987, and 1988. Although the lease did not include MDC's water rights on the property, MDC permitted Scriffiny to use as much water as he needed for his operations.

Hobika had been leasing her parcel of land since 1985 for the purpose of boarding and breeding horses. Hobika's lease provided for a $300 monthly payment for the use of a residence on the property and an additional $300 monthly payment for the use of the property itself and four outbuildings, which consisted of two barns, a tack room, and a three-sided shed. Hobika testified that her operations were unprofitable in 1986, 1987, and 1988, but that she expected to make a profit by the year 1990. Although Hobika's lease did not include the use of MDC's water rights, Hobika was permitted to use water as needed for her operations.

Effective January 1, 1988, the Boulder County Assessor reclassified MDC's property for 1988 tax purposes from "agricultural" to "vacant" land. The reclassification was based on several factors, including the high purchase price paid by MDC for ultimate use of the land for development, the annexation of the land to the Town of Superior, the rezoning of the land to a planned unit development, the pledg-

1. The Boulder County Board of Equalization and the Colorado Board of Assessment Appeals petitioned for certiorari, and thereafter filed a joint brief in support of their position. We refer collectively to both petitioners as the Board of Assessment Appeals.

ing of water rights by Rock Creek Partnership to the Town of Superior, and inadequate evidence of any monetary profit to MDC from agricultural operations on the land.

MDC unsuccessfully appealed the reclassification to the Boulder County Board of Equalization and then to the Colorado Board of Assessment Appeals. The Board of Equalization concluded that MDC had not presented sufficient evidence to rebut the presumption in favor of the assessor. The Board of Assessment Appeals concluded that the landowner, rather than the lessee, must utilize the land as "agricultural land" for the primary purpose of obtaining a profit and that the following factors were inconsistent with that purpose:

> One, annexing a farm or ranch to a town, receiving PUD zoning, and dedicating the water rights to a municipal water system; two, leasing 200 acres of irrigated land and 600 acres of pasture for $450 per month, or $23.52 per acre per year; and three, stating in a lease that no water rights are included, leasing the land at a dry-land rate, then giving the lessee all the water needed.

The court of appeals reversed the decision of the Board of Assessment Appeals and remanded the case to the Board with directions to enter an order classifying MDC's land as agricultural land for purposes of the tax assessment for the 1988 tax year. Noting that there is no requirement in the statutory scheme that the property owner actually graze livestock on the land for the primary purpose of making a profit or that the owner's leasing activity be conducted for the owner's own profit, the court of appeals concluded that the Board of Assessment Appeals "erred in interpreting the statute to require that the 'primary purpose' be applied to the landowner's intent rather than to the lessees' activities and the actual surface use of the land." *MDC Constr. Co.*, No. 90CA0063, slip op. at 2. We granted certiorari to consider whether the court of appeals properly concluded that MDC's land qualified as "agricultural land" for tax assessment purposes.

II.

As a prelude to our resolution of the question before us, we briefly review the constitutional and statutory standards by which land was classified and valued for tax assessment purposes at the time of the 1988 assessment at issue before us. We cite to those provisions of the General Property Tax Law in effect as of the date of the reclassification and appraisal of MDC's land, which was January 1, 1988. *See* § 39–1–105, 16B C.R.S. (1987 Supp.) (all taxable property appraised and valued for assessment purposes on January 1 of each year).

The Colorado Constitution states that all taxes upon real property shall be uniform and distinguishes agricultural and residential property from other types of real property for assessment purposes. Colo. Const. art. X, § 3(1)(a), 1A C.R.S. (1991 Supp.). Generally, valuations for assessment must be based on appraisals made by assessing officers for the purpose of determining the actual value of the property in accordance with provisions of law, "which laws shall provide that actual value be determined by appropriate consideration of cost approach, market approach, and income approach to appraisal." *Id.* Article X, section 3 of the Colorado Constitution, however, gives special tax consideration to agricultural lands by providing that "the actual value of agricultural lands, as defined by law, shall be determined solely by consideration of the earning or productive capacity of such lands capitalized at a rate as prescribed by law." Colo. Const. art. X, § 3(1)(a), 1A C.R.S. (1991 Supp.).

In keeping with these constitutional provisions, the General Property Tax Law, §§ 39–1–101 to –120, 16B C.R.S. (1982 & 1987 Supp.), includes a legislative declaration that its provisions shall be strictly construed for the purpose of securing a just and equalized valuation for assessment of all real and personal property not exempt from taxation. § 39–1–101, 16B C.R.S. (1987 Supp.). The statutory scheme requires the assessor of the county wherein the real property is located to appraise

the property and determine its actual value for property tax purposes. § 39–1–103(5)(a), 16B C.R.S. (1987 Supp.). With the exception of agricultural lands exclusive of building improvements, residential property, and producing mines and lands or leaseholds producing oil or gas, the actual value of real property is determined "by appropriate consideration of the cost approach, the market approach, and the income approach to appraisal." *Id.* In the case of agricultural lands, section 39–1–103(5)(a) states that the actual value, exclusive of building improvements thereon, "shall be determined by consideration of the earning or productive capacity of such lands during a reasonable period of time, capitalized at a rate of thirteen percent." Vacant land, in contrast, is treated as any other type of real property not accorded special tax consideration, and its actual value is determined by considering the cost approach, the market approach, and the income approach to appraisal.

"Agricultural land" is defined by section 39–1–102(1.6), 16B C.R.S. (1987 Supp.), as follows:

> (a) "Agricultural land" means a parcel of land which was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or which is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. "Agricultural land" includes land underlying any residential improvement located on such "agricultural land" and also includes the land underlying other improvements if such improvements are an integral part of the farm or ranch and if such other improvements and the land area dedicated to such other improvements are typically used as an ancillary part of the operation.[2]
>
> (b) All other agricultural property which does not meet the definition set forth in paragraph (a) of this subsection (1.6) shall be classified as all other property and shall be valued using appropriate consideration of the three approaches to appraisal based on its actual use on the assessment date.[3]

2. In 1990 the definition of "agricultural land" was amended and defined, in relevant part, as follows:

> [A] parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, which was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, and the gross income resulting from such use equals or exceeds one-third of the total gross income resulting from all uses of the property during any given property tax year.... Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use.

Ch. 277, sec. 16, § 39–1–102(1.6)(a), 1990 Colo. Sess.Laws 1687, 1695–96. Although we resolve this case on the basis of the statutory scheme in effect at the time of the 1988 assessment, we note in passing that the 1990 amendment states that annexation and zoning are irrelevant for purposes of agricultural classification and that land will qualify as agricultural land as long as the gross income from the agricultural operations on the land equals or exceeds one-third of the total gross income of the property.

3. When this case arose, there was no statutory definition of "vacant land," with the result that any land not meeting the definition of agricultural land could be classified as "vacant." Effective June 7, 1988, section 39–1–103(14) was amended to provide as follows:

> (a) The general assembly hereby finds and declares that, in determining the actual value of vacant land, there appears to exist a wide disparity in the treatment of vacant land by the assessing officers of the various counties; that the methods of appraisal currently being utilized by assessing officers for such valuation remain unclear; and that such assessing officers are provided detailed information concerning the appraisal of vacant land in the manuals, appraisal procedures, and instructions prepared and published by the administrator.
>
> (b) The assessing officers shall give appropriate consideration to the cost approach, market approach, and income approach to appraisal as required by the provisions of section 3 of article X of the state constitution in determining the actual value of vacant land. When using the market approach to appraisal in determining the actual value of vacant land, assessing officers shall take into account, but need not limit their considera-

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." § 13–1–102(3.5), 16B C.R.S. (1987 Supp.). Subsection (13.5) of section 39–1–102, 16B C.R.S. (1987 Supp.), defines a "ranch" as follows:

> "Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food, draft, or profit.

III.

[1] The facts underlying this case are basically undisputed. What is at issue is the application of the law to those facts. In urging reversal of the judgment, the Board of Assessment Appeals contends that the court of appeals erred in holding that the lessees' use of the MDC property for the primary purpose of making a profit from their ranching operations, rather than MDC's activities with respect to the land and its intent in purchasing and maintaining the property, was the determinative factor in qualifying the property as "agricultural land." We reject the Board's argument and conclude that the text of section 39–1–102, 16B C.R.S. (1987 Supp.), supports the decision of the court of appeals.

[2–4] The Colorado Constitution, in addition to providing special tax consideration to agricultural land by requiring that such lands be valued solely by considering their earning or productive capacity, vests the General Assembly with the authority to define agricultural land for tax assessment purposes. Colo. Const. art. X, § 3(1)(a), 1A C.R.S. (1991 Supp.). The General Assembly has defined agricultural lands in subsection (1.6)(a) of section 39–1–102, 16B C.R.S. (1987 Supp.), and our function here is not to question the wisdom of that definition. Rather, our responsibility is to construe and apply the statute in accordance with legislative intent. *Kern v. Gebhardt*, 746 P.2d 1340, 1344 (Colo.1987); *Engelbrecht v. Hartford Accident and Indem. Co.*, 680 P.2d 231, 233 (Colo.1984). To determine that intent we look primarily to the language of the statute itself with a view toward giving effect to the statutory terminology in accordance with its commonly accepted meaning. *Kern*, 746 P.2d at 1344. When the statutory language is plain, it should not be subjected to a strained or forced interpretation. *Id.*

[5, 6] The focus of the statutory definition of agricultural land in section 39–1–102, 16B C.R.S. (1987 Supp.), is clearly on present and past surface use of the land without regard to any future intent on the part of the owner to develop the land for nonagricultural purposes. To qualify as "agricultural land" under subsection (1.6), the land must be presently *used* as a farm or ranch, must have been *so used* during the two-year period prior to the assessment, must have been classified or eligible for classification as "agricultural land"

tion to, the following factors: The anticipated market absorption rate, the size and location of such land, the cost of development, any amenities, any site improvements, access, and use. When using anticipated market absorption rates, the assessing officers shall use appropriate discount factors in determining the present worth of vacant land until at least eighty percent or more of the lots within an approved plat have been sold and shall include all vacant land in the approved plat. The use of present worth shall reflect the anticipated market absorption rate for the lots within such plat, but such time period shall not generally exceed ten years.

(c)(I) For purposes of this subsection (14), "vacant land" means any lot, parcel, site, or tract of land upon which no buildings, structures, or fixtures are located. "Vacant land" may include land with site improvements. "Vacant land" may include land with improvements that may be part of a development tract or subdivision when using present worth discounting in the market approach to appraisal. "Vacant land" does not include agricultural land, producing oil and gas properties, severed mineral interests, and all mines, whether producing or nonproducing.

(II) For purposes of this subsection (14), "site improvements" means streets with curbs and gutters, culverts and other sewage and drainage facilities, and utility easements and hookups for individual lots or parcels.

Ch. 268, sec. 4, § 39–1–103(14), 1988 Colo.Sess. Laws 1276, 1281.

during the ten years preceding the assessment year, and must continue to have *actual agricultural use.* Pursuant to subsection (3.5) of section 39–1–102, a parcel of land satisfies the definition of a "farm" when the land *is used* to produce agricultural products originating from the land's productivity for the primary purpose of making a monetary profit. In similar fashion, pursuant to subsection (13.5) of this statute, a parcel of land qualifies as a "ranch" when the land *is used* for grazing livestock for the primary purpose of making a profit. These statutory provisions demonstrate that the surface use of the land for monetary profit from agricultural activities, and not the owner's plans or intent with respect to future development, is the determinative factor in the classification of land as "agricultural land" for property tax assessment purposes.

[7] The statutory text of section 39–1–102 is devoid of any language suggesting that the General Assembly intended to differentiate between, on the one hand, a lessee's primary purpose in using the land and, on the other, the landowner's primary purpose in acquiring and maintaining ownership of the land. Nor is there any indication in the statutory text of section 39–1–102 that the landowner must actually profit or intend to profit from agricultural operations on the land conducted by the owner's lessees. Where, as here, the standards for classification of land as "agricultural land" are clearly cast in terms of the surface use of the land, those standards should be applied as written and should not be subjected to an interpretation that incorporates factors not contained within the statutory text. *Rancho Colorado, Inc. v. City of Broomfield,* 196 Colo. 444, 447, 586 P.2d 659, 661 (1978) (courts should not interpret statute to mean that which it does not express). We agree in this respect with the reasoning of the court of appeals in *Estes v. Board of Assessment Appeals,* 805 P.2d 1174, 1175 (Colo.App.1990), wherein the court stated:

> There is no requirement in the statute that the property *owner* be the one who grazes livestock on the parcel for the primary purpose of making a profit or that the owner's leasing activity be conducted for profit to the owner. Rather, the statute requires only that the land actually be used for grazing livestock, which, in turn, must be done for the primary purpose of obtaining a profit from the grazing activities. (emphasis in original).

See also Arapahoe Partnership v. Board of County Comm'rs, 813 P.2d 766 (Colo. App.1990); *C.A. Staack Partnership v. Board of County Comm'rs,* 802 P.2d 1191 (Colo.App.1990).

[8] Our holding in *Board of Assessment Appeals v. Colorado Arlberg Club,* 762 P.2d 146, 153 (Colo.1988), that reasonable future use is a relevant factor in determining the market value of commercial property for tax purposes does not militate in favor of a different analysis. Agricultural land is appraised on the basis of its earning or productive capacity, while commercial property is appraised by an appropriate consideration of the cost approach, market approach, and the income approach to appraisal. Colo. Const. art. X, § 3. Nor does the fact that the Board of Assessment Appeals adopted an administrative interpretation at variance from the court of appeals' analysis compel a different result. While the construction of a statute by the agency charged with its enforcement is entitled to deference, courts are not bound by that construction where the result reached by the agency is inconsistent with legislative intent as manifested in the statutory text. *E.g., Colorado Div. of Employment and Training v. Parkview Episcopal Hosp.,* 725 P.2d 787, 791 (Colo.1986). The interpretation adopted by the Board of Assessment Appeals is contrary to the plain terms of the statute.

In this case there is no question that the land was used by the lessees, Scriffiny and Hobika, as ranch or farm land at the time of the 1988 assessment and had been so used during the two year period preceding the assessment. The record shows that for three years preceding the 1988 assessment Scriffiny had been raising cattle and growing hay on his parcel and that Hobika had been boarding and breeding horses on her

parcel. The record also demonstrates that the land had been used for grazing livestock and agricultural operations as far back as 1942 and, thus, had been eligible for classification as agricultural land during the ten year period preceding the 1988 assessment. Finally, both Scriffiny and Hobika testified—and their testimony was essentially undisputed—that their primary objective in conducting their agricultural activities on their respective parcels was to make a profit.

In light of the statutory text of section 39-1-102, 16B C.R.S. (1987 Supp.), and the evidentiary state of the record, we affirm the judgment of the court of appeals.

LOHR, J., dissents, and MULLARKEY, J., joins in the dissent.

Justice LOHR dissenting:

The majority holds that in determining whether leased land is to be classified as agricultural land for property tax purposes, only the lessee's actual use of the land and the lessee's purpose in putting the land to such use are relevant. As a result, a landowner-lessor can reap the large property tax benefit that results from classification of land as agricultural by structuring an agricultural lease with rental rates and other terms highly advantageous to the lessee, thereby enabling the lessee to operate for the primary purpose of obtaining a monetary profit. Because I believe this construction of the relevant statutes is incorrect and results in valuations for assessments that are not "just and equalized," *see* Colo. Const. art. X, § 3(1)(a), I respectfully dissent.

The land that is the subject of this litigation consists of approximately 1200 acres in Boulder County. Historically, it was used for farming and ranching purposes. In 1987 M.D.C. Construction Company (MDC), a land developer, purchased the land for $12,735,000. Pending future development, MDC leased approximately 800 acres to Joseph Scriffiny for raising hay and pasturing cattle. The remainder of the property was leased to Regina Hobika for horse boarding and breeding. Details on the terms of these leases and the manner in which the lessees used the lands are set forth in the majority opinion. *See* maj. op. at 977.

Effective January 1, 1988, the Boulder County Assessor reclassified the land from agricultural land to vacant land. Because of the advantageous manner of valuing agricultural land prescribed by the Colorado Constitution, article X, section 3(1)(a), this change resulted in increased taxes to MDC for 1988 represented by the difference between $123,090, the tax applicable if the land was properly classified as vacant, and $5,331, the tax applicable based on an agricultural classification.[1] MDC appealed unsuccessfully to the Boulder County Board of Equalization and was also unsuccessful in overturning the classification in a de novo hearing before the Board of Assessment Appeals. The Colorado Court of Appeals, however, reversed that latter decision and remanded for classification as agricultural land, based on the property's use as a "ranch." *M.D.C. Construction Co. v. Board of Assessment Appeals*, No. 90CA0063 (Colo.App. March 21, 1991) (not selected for publication). The majority now upholds the court of appeals' judgment.

The Colorado Constitution provides for just and equalized valuations for assessments for all real property. Colo. Const. art. X, § 3(1)(a). The Constitution provides that the actual value of property other than agricultural or residential property is to be determined "by appropriate consideration of cost approach, market approach, and income approach to appraisal." *Id.* Agricultural lands, however, are to be "defined by law" and valued "solely by consideration of the earning or productive capacity of such lands capitalized at a rate as pre-

1. These figures represent the tax differential calculated by the Board of Assessment Appeals as set forth in its brief to this court. In testimony before the Board of Assessment Appeals, MDC's comptroller estimated the increase that would occur based on a change in classification of the property from agricultural land to vacant land to be a roughly comparable amount.

scribed by law." *Id.*[2] Accordingly, when the true value of land subject to an agricultural lease is greater than the value arrived at by capitalization of its earning capacity, classification of the property as agricultural lands results in a tax advantage to the owner.

The legislature has exercised its constitutional power to define agricultural lands. Section 39–1–102(1.6), 6B C.R.S. (1987 Supp.), provides in pertinent part:

> (a) "Agricultural land" means a parcel of land which was used the previous two years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or which is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use.[3]

At issue here is whether the property is used as a ranch as defined by section 39–1–102(13.5). Pursuant to that definition:

> "Ranch" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food, draft, or profit.

§ 39–1–102(13.5), 6B C.R.S. (1987 Supp.).

Familiar principles guide us in construing these statutory provisions. "A statute must be construed in a manner consistent with constitutional requirements whenever reasonable and practical." *Romero v. Sandoval*, 685 P.2d 772, 776 (Colo.1984); *accord* § 2–4–201(1)(a), 1B C.R.S. (1980). Our primary purpose is to determine and give effect to the legislative intent. *Kern v. Gebhardt*, 746 P.2d 1340, 1344 (Colo. 1987). "There is a presumption that the General Assembly intends a just and reasonable result when it enacts a statute...." *Ingram v. Cooper*, 698 P.2d 1314, 1315 (Colo.1985); *accord* § 2–4–201(1)(c). We must also presume that the public interest is favored over any private interest. § 2–4–201(1)(e). Furthermore, the construction given a statute by administrative officials charged with its enforcement is to be given deference by the courts. *E.g., Colorado Civil Rights Comm'n v. Travelers Ins. Co.*, 759 P.2d 1358, 1366 (Colo.1988); *City & County of Denver v. Industrial Comm'n*, 690 P.2d 199, 203 (Colo.1984).

The majority, focusing on the term "use," finds the meaning of sections 39–1–102(1.6) and (13.5) clear. The majority concludes that the language of these provisions relates solely to surface use and that the intent of the surface user—here the lessees—is the only relevant intent in determining whether the use is for the primary purpose of obtaining a monetary profit. Maj. op. at 981. I discern no such clarity in the statutory language.

The propriety of the agricultural classification at issue depends upon whether the property is used for grazing livestock "*for the primary purpose of obtaining a monetary profit.*" § 39–1–102(13.5) (emphasis added). This requirement indicates that the legislature was concerned with something more than the appearance or surface use of the property. Merely grazing livestock on land will not automatically qualify the property as a ranch, and thus as agricultural lands, for property tax purposes. In addition, it must be shown that such activity is conducted for the primary purpose of obtaining a profit. *See id.*

I believe the purpose of the special constitutional treatment of agricultural land and the legislative requirement of a purpose to make a profit was to limit the advantageous agricultural lands classification to bona fide farming or ranching oper-

2. Residential real property, not at issue here, is the only other class of property valued differently from the manner of valuing all other property. Only the cost approach and market approach are to be used in valuing residential property. Colo. Const. art. X, § 3(1)(a).

3. As the majority opinion notes, the definition of "agricultural land" was amended in 1990, but the statutory change is not relevant to the present case. *See* maj. op. at 979 n. 2.

ations. The result of the majority opinion, however, is to permit owners to obtain this preferential tax classification by leasing property to persons such as Scriffiny and Hobika at below market or even nominal rates, thus allowing the lessees to make a profit from land that otherwise could not profitably support a ranching operation. This extends the tax benefit conferred on agricultural lands to persons who conduct ranching activities on their property not for the purpose of obtaining a profit, but for the purpose of obtaining a significant tax reduction. Consequently, these property owners avoid the constitutional requirement of just and equalized valuation for assessment.

The Board of Assessment Appeals, the agency charged with administering the system of property tax valuation, construed the statutes to prevent this result, holding that in the statutory definition of "ranch," "the obligation to be in operation for the primary purpose of obtaining a monetary profit applies to the land owner and does not apply to the lessee or [sic] the land." The Board of Assessment Appeals detailed the characteristics of the Scriffiny and Hobika leases, as well as MDC's activities in preparing the land for development, in its findings and concluded

> that the following practices of [MDC] are not consistent with farming and ranching for the primary purpose of obtaining a monetary profit: (1) annexing a farm or ranch to a town, receiving PUD zoning and dedicating the water rights to a municipal water system; (2) leasing 280 acres of irrigated land and 600 acres of pasture land for $450.00 per month, or $23.52 per acre per year; and (3) stating in a lease that no water rights are included, leasing the land at a dry land rate, then giving the lessee all the water needed.

There is no contention that the Board's findings are not supported by the record. Under these circumstances, I believe the Board properly determined that the property did not qualify as a "ranch" and therefore was not entitled to assessment as "agricultural land."

I would reverse the judgment of the court of appeals and direct affirmance of the decision of the Board of Assessment Appeals. Accordingly, I respectfully dissent.

MULLARKEY, J., joins in this dissent.

In the Matter of the TITLE, BALLOT TITLE AND SUBMISSION CLAUSE, AND SUMMARY ADOPTED FEBRUARY 19, 1992, Pertaining to the Proposed Tobacco Tax, and Motion for Rehearing Denied on March 6, 1992.

Pat R. Stealey, Petitioner,

and

Swanee Hunt and Lila Gracey, Respondents,

and

Natalie Meyer, Gale Norton and Douglas Brown, Title Setting Board.

No. 92SA117.

Supreme Court of Colorado, En Banc.

May 26, 1992.

Registered elector brought challenge to title, ballot title and submission clause, and summary formulated by title setting board for proposed initiated statute concerning increased tax on cigarettes and tobacco products. The Supreme Court, Lohr, J., held that: (1) title and ballot title and submission clause were not misleading; (2) summary was clear and concise and constituted true and impartial summary of proposed measure; and (3) board was within its discretion to include in summary a statement that net fiscal impact of measure was not known.

Affirmed.

confess, the police implied a promise of leniency. *See, e.g., People v. Trujillo*, 938 P.2d 117 (Colo.1997)(statement was voluntary when police did not promise the defendant anything in return for a confession).

Thus, the trial court did not err in finding that the statement was voluntarily given. *See People v. Cardenas, supra* (a statement is voluntary when it is not the product of threats or violence and not obtained by any direct or implied promises or by the exertion of any improper influence).

B.

[22] Defendant also contends that the trial court erred in admitting the videotape because the initial portion of the tape, in which defendant denied responsibility for the murder, was partially inaudible and his face was blocked from view. We find no error.

[23] The trial court has broad discretion in determining the admissibility of tape recordings, and their admission will not be disturbed on appeal in the absence of an abuse of discretion. *People v. Jeffers*, 690 P.2d 194 (Colo.1984).

Defendant has failed to show how he was prejudiced by the inaudible portions of the videotape. The record reveals that the videotape clearly conveyed that defendant initially denied any responsibility for the murder and then, after the break, admitted that he was the shooter.

Therefore, we conclude defendant has not shown prejudice. *See People v. Jeffers, supra* (ruling no prejudice was shown when the defendant failed to establish how the inaudible segments affected the tapes' reliability). Accordingly, the trial court did not abuse its discretion in admitting the videotape. *See People v. Quintana*, 189 Colo. 330, 540 P.2d 1097 (1975)(even though parts of an audiotaped statement were inaudible, this fact did not render the entire recording inadmissible).

III.

We also address defendant's contention that notebooks given to the jury contained information that conflicted with the jury instructions given in his case.

Crim. P. 16(IV)(f) requires that notebooks be available for jurors during felony trials. The notebooks here contained general information that defendant objected to as inapplicable or contrary to the circumstances of his case. Specifically, he challenged the following information contained in the notebooks: that the only difference between a civil and a criminal case is what the parties are called and who represents them; that defendants testify and present evidence; that a defendant could receive a deferred sentence or probation; that every sentence is for a finite period of time; and that a defendant is eligible for parole.

Although we find no reversible error because defendant has not shown prejudice in this case, to avoid confusion in the new trial, the court is directed to edit and correct the information contained in the notebooks.

IV.

Defendant's remaining contentions of error are unlikely to arise on retrial. Therefore, we will not address them.

The judgment is reversed, and the case is remanded for a new trial.

Judge METZGER and Judge TAUBMAN concur.

WELBY GARDENS COMPANY, Petitioner–Appellee,

and

Colorado Board of Assessment Appeals, Appellee,

v.

ADAMS COUNTY BOARD OF EQUALIZATION, Respondent–Appellant.

No. 01CA0307.

Colorado Court of Appeals, Div. V.

Jan. 3, 2002.

As Modified on Denial of Rehearing May 23, 2002.

Certiorari Granted Oct. 28, 2002.

County board of equalization appealed order of the Board of Assessment Appeals

(BAA) that real property owned by greenhouse operator should be classified and valued as agricultural land for purposes of ad valorem tax. The Court of Appeals, Kapelke, J., held that agricultural production of greenhouses did not originate from land's productivity.

Reversed.

1. Taxation ⇐493.8

Findings of fact of Board of Assessment Appeals (BAA) are entitled to deference unless unsupported by competent evidence or reflect a failure to abide by statutory scheme for property tax assessment.

2. Taxation ⇐493.8

Reviewing court is not bound by Board of Assessment Appeals' (BAA) interpretation of law where it is inconsistent with clear language of statute or legislative intent.

3. Taxation ⇐348.1(3)

Agricultural land in Colorado receives favorable ad valorem tax treatment, calculated on the basis of the earning or productive capacity of the land. West's C.R.S.A. Const. Art. 10, § 3(1)(a); West's C.R.S.A. § 39–1–103(5)(a).

4. Taxation ⇐348.1(3)

Property supporting greenhouses was not "farm " property, for purposes of ad valorem tax, where the products were grown in fully enclosed, environmentally controlled buildings, and in soil obtained from outside sources; agricultural products produced on the property did not originate from the land's productivity. West's C.R.S.A. § 39–1–102(3.5).

See publication Words and Phrases for other judicial constructions and definitions.

5. Statutes ⇐181(1), 188

Reviewing court must construe and apply a statute in accordance with the legislative intent, which is primarily determined by language of the statute itself.

6. Statutes ⇐188

When statutory language is plain, it must be applied as written and should not be subjected to a strained or forced interpretation.

7. Statutes ⇐188, 206

Reviewing court must determine legislative intent by giving each word and phrase effect, using the commonly accepted meanings.

8. Taxation ⇐348.1(3)

To qualify as a "farm "under the ad valorem tax, property must produce agricultural products that originate from the land's productivity, which requires that there be some relationship between the agricultural products and the productive capacity of the parcel of land. West's C.R.S.A. § 39–1–102(3.5).

William A. McLain, P.C., William A. McLain, Denver, CO, for Petitioner–Appellee.

No Appearance for Appellee.

James D. Robinson, Adams County Attorney, Jennifer Wascak Leslie, Assistant County Attorney, Brighton, CO, for Respondent–Appellant.

Opinion by Judge KAPELKE.

In this property tax case, respondent, Adams County Board of Equalization (the County), appeals the order of the Board of Assessment Appeals (BAA) determining that certain real property owned by the taxpayer, Welby Gardens Company, should be classified and valued as agricultural land for purposes of ad valorem taxation. We reverse.

The property at issue (the Property) consists of two parcels of land in Adams County, which are primarily used for greenhouses and greenhouse support buildings, including an 8000–square–foot retail garden center and a public parking area. A third parcel, which is leased to a third party and used for growing agricultural crops, is now conceded by the County to be agricultural land.

Taxpayer produces vegetables, flowers, and fruiting plant starts. Most of the products are grown in containers in the greenhouses; however, taxpayer also has a test field of approximately three acres in which

plants are grown in the ground... Taxpayer generally does not use the soil from the Property for the greenhouse containers. The environment of the greenhouses is regulated using water systems, humidity pads, fans, and heaters. The plants are primarily sold at wholesale; however, some sales are made at the on-site retail center (which is classified as commercial) and at another retail outlet.

For the tax year 1999, the Adams County Assessor's Office classified and valued the Property as commercial land and improvements. Taxpayer appealed to the Board of Assessment Appeals (BAA). Relying on *Morning Fresh Farms, Inc. v. Weld County Board of Equalization*, 794 P.2d 1073 (Colo. App.1990), the BAA ruled that the Property should be classified as agricultural.

I.

The County contends that the BAA's statutory interpretation is contrary to the plain language and intent of the Colorado statutes and that the BAA therefore erred in determining that the Property should be classified as agricultural land. We agree.

[1, 2] Findings of fact of the BAA are entitled to deference unless they are unsupported by competent evidence or reflect a failure to abide by the statutory scheme for property tax assessment. *Bd. of Assessment Appeals v. E.E. Sonnenberg & Sons, Inc.*, 797 P.2d 27 (Colo.1990). However, a reviewing court is not bound by the BAA's interpretation of law where it is inconsistent with the clear language of the statute or legislative intent. *Douglas County Bd. of Equalization v. Clarke*, 921 P.2d 717 (Colo.1996).

[3] Agricultural land in Colorado receives favorable ad valorem tax treatment, calculated on the basis of the earning or productive capacity of the land. Colo. Const. art. X, § 3(1)(a); § 39–1–103(5)(a), C.R.S.2001. As relevant here, "agricultural land" is defined as "[a] parcel of land ... that was used the previous two years and presently is used as a farm or ranch." Section 39–1–102(1.6)(a), C.R.S.2001.

At issue here is the definition of "farm." Section 39–1–102(3.5), C.R.S.2001, defines a "farm" 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." "Agricultural and livestock products" are defined in 39–1–102(1.1), C.R.S.2001, as:

> plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, regardless of the use of the product after its sale and regardless of the entity that purchases the product. "Agriculture", for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture.

The BAA, relying on the dictionary definition of "horticulture," determined that the Property is a farm because it is a parcel of land that produces agricultural products, including products derived from horticulture, for the primary purpose of obtaining a monetary profit. Thus, the BAA ruled that the Property is agricultural land and should be assessed as such.

[4] The County urges that this finding is contrary to the plain language of § 39–1–102(3.5), which requires that the agricultural products "originate from the land's productivity." This language, the County argues, requires a showing that the agricultural products have some connection with the land or soil itself. Because the products here are grown in fully enclosed, environmentally controlled buildings, and in soil obtained from outside sources, the County maintains that they bear no relationship to the land and that the BAA's ruling therefore violates the language and purpose of the statute. We agree.

[5–7] A reviewing court must construe and apply a statute in accordance with the legislative intent. To determine that intent, we look primarily to the language of the statute itself, and when the statutory language is plain, it must be applied as written and "should not be subjected to a strained or forced interpretation." *Boulder County Bd. of Equalization v. M.D.C. Constr. Co.*, 830 P.2d 975, 980 (Colo.1992). Further, each word and phrase must be given effect, using the commonly accepted meanings. *San Mi-*

guel County Bd. of Equalization v. Telluride Co., 947 P.2d 1381 (Colo.1997).

[8] According to the plain language of § 39–1–102(3.5), to qualify as a farm, a property must produce agricultural products "that originate from the land's productivity." This requirement is consistent with the constitutional mandate that agricultural land be valued "solely by consideration of the earning or productive capacity of such lands capitalized by a rate as prescribed by law." Colo. Const. art. X, § 3(1)(a). We agree with the County that this language requires that there be some relationship between the agricultural products and the productive capacity of the parcel of land. Where, as here, the land serves only to provide a site for a greenhouse operation, the products involved do not originate from the productivity of the land on which the greenhouses are located.

The BAA relied on *Morning Fresh Farms, supra*, for its decision. In that case, the plaintiff sought a personal property tax exemption for certain equipment used in its egg production facilities. A division of this court held that a forty-acre portion of the land that included buildings housing hens and egg handling equipment could fall within the definition of a farm under § 39–1–102(3.5). The egg production and hen replacement facilities were entirely self-contained, and none of the hens ever touched the ground. The division held, nevertheless, that there was nothing in the statutory definition of a farm that would exclude this portion of the property from being classified as a farm, and that the equipment thus could be exempt from personal property taxation as "agricultural equipment which is used on a farm or ranch in the production of agricultural products." *Morning Fresh Farms, Inc. v. Weld County Bd. of Equalization, supra*, 794 P.2d at 1075.

In following *Morning Fresh Farms*, the BAA here stated that "there is no material difference between a chicken sitting on wooden slats and producing an egg for profit, and a greenhouse plant, placed on wooden slats, producing a horticultural product for profit."

We conclude, however, that the facts in *Morning Fresh Farms* are distinguishable from those here. There, the egg production facility involved a 40 acre portion of an 800–acre farm on which corn, wheat, and alfalfa were grown. Some of the feed for the chickens was grown on the farm. Here, the Property is not a part of a larger agricultural property, but, rather, is itself primarily used for a commercial enterprise. We do not read the *Morning Fresh Farms* opinion as holding that property can be classified as agricultural even if there is no relationship between the agricultural product and the productivity of the land. However, to the extent that the opinion can be read to so hold, we conclude that it fails to give meaning to all the plain language of the statute, and we would therefore decline to follow it.

Because the agricultural products produced on the Property here do not originate from the land's productivity, as required by the plain language of the statute, we conclude that the Property is not a farm under § 39–1–102(3.5) and thus may not be classified and valued as agricultural for property tax purposes.

II.

The County also argues that the BAA erred by failing to give deference to the Property Tax Administrator's interpretation of § 39–1–102(1.6)(a), as codified in the *Assessors Reference Library*. However, because we conclude that the BAA's interpretation is contrary to the plain language of the statute, we need not address the issue.

The order of the BAA is reversed.

Judge VOGT and Justice ERICKSON,* concur.

* Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24–51–1105, C.R.S.2001.

aminers of his successful completion of the examination for admission to practice law.

John S. PALMER, Petitioner–Appellee,

and

Board of Assessment Appeals of the State of Colorado, Appellee,

v.

BOARD OF EQUALIZATION, EAGLE COUNTY, Respondent–Appellant,

and

Mary E. Huddleston, Property Tax Administrator, Intervenor–Appellant.

No. 97CA0403.

Colorado Court of Appeals, Div. V.

April 16, 1998.

Board of equalization appealed order by Board of Assessment Appeals to classify taxpayer's land as agricultural land for tax purposes. The Court of Appeals, Kapelke, J., held that grazing and boarding of pleasure horses was not an agricultural use for tax purposes.

Order vacated.

1. Taxation ⇐348.1(3)

Land used for grazing and boarding of "pleasure horses" did not qualify as a "ranch" under statute defining agricultural land, for tax classification purposes; agricultural use for grazing of livestock required that animals be used for food for human or animal consumption, breeding, draft, or profit. West's C.R.S.A. § 39–1–102(1.6)(a)(I), (13.5).

See publication Words and Phrases for other judicial constructions and definitions.

2. Taxation ⇐485(1)

Taxpayer had burden of proof to show any qualifying "ranching" and/or "farming" uses of his land in support of his claims for agricultural classification. West's C.R.S.A. § 39–1–102(1.6)(a)(I), (13.5).

Lindahl Associates, P.C., Kevin B. Lindahl, Eagle, for Petitioner–Appellee.

No Appearance for Appellee.

James R. Fritze, Eagle County Attorney, Mary Joan Berenato, Special Assistant County Attorney, Vail, for Respondent–Appellant.

Gale Norton, Attorney General, Martha Allbright Phillips, Chief Deputy Attorney General, Richard Westfall, Solicitor General, Larry A. Williams, First Assistant Attorney General, Denver, for Intervenor–Appellant.

Opinion by Judge KAPELKE.

In this property tax case, respondent, the Eagle County Board of Equalization (BOE), appeals from an order of the Board of Assessment Appeals (BAA) which required it to reclassify the remaining portions of land owned by petitioner, John S. Palmer (taxpayer), as agricultural land for the 1996 tax year. We vacate the BAA's order.

At issue in this appeal is the propriety of the agricultural classification placed by the BAA on a 28.268–acre portion of taxpayer's land for the 1996 tax year.

It is undisputed that the property has been used for several years as a horse boarding operation. For the 1996 tax year, the BOE had previously reclassified only a 13.5–acre portion of taxpayer's land as agricultural, but had denied any further reclassification. The 13.5–acre portion is a hay meadow that has been used in connection with the horse boarding. Following an evidentiary hearing, the BAA ordered that the remainder of the subject property consisting of 28.268 acres also be reclassified as agricultural land.

The BOE contends that the evidence was insufficient to support the BAA's decision reclassifying a portion of the taxpayer's property as agricultural. We agree.

At the time of the assessment here, § 39–1–102(1.6)(a)(I), Colo. Sess. Laws 1990, ch. 277 at 1695, defined agricultural land as land "which was used the previous two years and presently is used as a farm or ranch ... and the gross income resulting from such use equals or exceeds one-third of the total gross income resulting from all uses of the property during any given property tax year...."

While the 13.5–acre portion of the property used for growing hay had already been classified as agricultural, the remaining portion had been classified as residential for at least the past ten years. Because the record reveals that most of the gross income was derived from the horse boarding operation—rather than from the hay growing—the property could properly be classified as agricultural only if the horse boarding operation itself could be deemed an agricultural use.

Section 39–1–102(13.5), C.R.S.1997, defines a "ranch" as:

> A parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5) 'livestock' means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

The central question becomes then whether the horses in the boarding operation constitute "livestock" under the quoted subsection. Determination of that issue, in turn, depends on whether the horses were used for the qualifying purposes stated in § 39–1–102(13.5).

Contrary to taxpayer's argument, his own profit motive in boarding and grazing the horses on his land is insufficient, without more, for these activities to constitute a "ranching" use under the statutory criteria. Rather, under these provisions, only the grazing of "livestock" for such purposes constitutes a "ranching" use, and horses may constitute such "livestock" only if they are used "for food for human or animal consumption, breeding, draft, or profit." Section 39–1–102(13.5).

[1, 2] Thus, we agree with the BOE that the grazing and boarding of "pleasure horses" does not qualify as a "ranching" use for agricultural classification purposes under these provisions. *See* 3 *Assessors Reference Library* § V at 5.21–5.23 (revised 1–95). We further agree with the BOE that 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. *See Douglas County Board of Equalization v. Clarke*, 921 P.2d 717 (Colo. 1996).

The BAA, in ruling in the taxpayer's favor, made a finding that the BOE "did not offer sufficient evidence to show that the horses on the property were pleasure horses." In so doing, the BAA misplaced the burden of proof, which properly resides with the taxpayer as to showing a basis for the requested reclassification.

Notably, the taxpayer himself acknowledged in his testimony that he did not even know the purpose for which the owners of the horses used them. Nor did the taxpayer adduce any other evidence that the horses were being used for one of the specified statutory purposes.

In the absence of such a showing, the taxpayer could not—and did not—demonstrate that the horses fell within the statutory definition of livestock under § 39–1–102(13.5). Consequently, the taxpayer also failed to establish that the use of the 28.268 acres could properly be considered "agricultural" within the meaning of the statute.

Thus, because the BAA abused its discretion in misallocating the burden of proof, and because the evidence does not support the BAA's conclusion that the property meets the requirements of the agricultural classification, the order cannot stand.

Accordingly, the order of the BAA requiring reclassification of the 28.268–acre parcel is vacated.

MARQUEZ and STERNBERG*, JJ., concur.

* Sitting by assignment of the Chief Justice under provisions of the Colo. Const. art. VI, Sec. 5(3), and § 24–51–1105, C.R.S.1997.

be based on a comparison of the statutes. *People v. Rivera*, 186 Colo. 24, 525 P.2d 431 (1974).

[15] Here, defendant was charged and convicted of both first degree burglary and second degree burglary even though the facts established the entry into only one condominium unit.

Section 18–4–202, C.R.S. (1986 Repl.Vol. 8B), the first degree burglary statute, provides in part that:

> "A person commits first degree burglary if he knowingly enters or remains unlawfully in a *building or occupied structure* with intent to commit therein a crime ... against a person or property, and in effecting entry or while in the building or occupied structure or in immediate flight therefrom, he or another participant in the crime assaults or menaces any person, or he or another participant is armed with explosives or a deadly weapon." (emphasis added)

First degree burglary is a class 3 felony. Section 18–4–202(2), C.R.S. (1986 Repl.Vol. 8B).

A person commits second degree burglary, a class 4 felony:

> "if he knowingly breaks an entrance into, or enters, or remains unlawfully in a building or occupied structure with intent to commit therein a crime against a person or property."

Section 18–4–203(1), C.R.S. (1986 Repl.Vol. 8B). However, second degree burglary is a class 3 felony if it is a "burglary of a dwelling." Section 18–4–203(2)(a), C.R.S. (1986 Repl.Vol. 8B).

In this case, the jury was instructed both as to first degree burglary and as to class 3 felony second degree burglary, burglary of a dwelling.

Because conviction for the class 3 felony second degree burglary of a dwelling requires proof of an additional fact beyond that required for proof of first degree burglary, *i.e.*, proof that the burglary was of a dwelling, defendant was properly convicted of and sentenced for both first and second degree burglary. We note as well that for these offenses. *See* § 18–1–408(5), C.R.S. (1986 Repl.Vol. 8B).

Judgment affirmed.

METZGER and JONES, JJ., concur.

ARAPAHOE PARTNERSHIP, a Colorado Partnership, Plaintiff–Appellant,

v.

The BOARD OF COUNTY COMMISSIONERS OF the COUNTY OF ARAPAHOE, as the County Board of Equalization, Betty Ann Dittemore, Thomas R. Eggert and Bob Brooks, as Members of the Board of County Commissioners of the County of Arapahoe and of the County Board of Equalization, and Joseph Marceny, as the Assessor of the County of Arapahoe, Defendants–Appellees.

No. 89CA1362.

Colorado Court of Appeals, Div. V.

Nov. 23, 1990.

Rehearing Denied Dec. 27, 1990.

Certiorari Denied July 29, 1991.

Taxpayer filed action protesting valuation of property. The District Court, Arapahoe County, Michael J. Watanabe, J., determined that the land was not a "farm" and thus was not agricultural land for tax assessment purposes, and taxpayer appealed. The Court of Appeals, Jones, J., held that: (1) appellate review was of a trial de novo in the district court and record of that proceeding, rather than judicial review of record of proceedings of county board of equalization, and (2) sufficient evidence supported conclusion that property was not

"agricultural land" for tax assessment purposes.

Affirmed.

1. Taxation ⇐493.7(8)

Appellate review of property owner's action protesting property assessment was review of a trial de novo in the district court and the record of that proceeding, rather than a judicial review of the record of proceedings of the county board of equalization.

2. Taxation ⇐493.7(5)

Taxpayers protesting tax assessment in trial de novo must prove by preponderance of the evidence that the assessment of their property is incorrect. West's C.R.S.A. §§ 13-25-127(1), 39-8-108(1).

3. Taxation ⇐348.1(3)

Sufficient evidence supported finding that property was not "agricultural land" for tax assessment purposes; taxpayers failed to show that primary purpose of their use of the property during the years in question was for farming with the intent to obtain profit. West's C.R.S.A. §§ 13-25-127(1), 39-1-102(1.6)(a), (3.5).

See publication Words and Phrases for other judicial constructions and definitions.

Tallmadge, Tallmadge, Wallace & Hahn, P.C., David J. Hahn, John W. Smith, III, Cynthia A. Calkins, Denver, for plaintiff-appellant.

Peter Lawrence Vana, III, County Atty., Richard F. Mutzebaugh, Sp. Asst. County Atty., Littleton, for defendants-appellees.

Opinion by Judge JONES.

Plaintiff, Arapahoe Partnership, appeals a district court judgment determining that plaintiff's land was not a "farm" within the meaning of § 39-1-102(3.5), C.R.S. (1990 Cum.Supp.) and, thus, was not "agricultural land" for the purposes of assessment for the 1988 tax year. We affirm.

The Arapahoe County Assessor determined that the plaintiff's property did not qualify as "agricultural land." The Assessor's determination was upheld by the Arapahoe County Board of Equalization, which denied plaintiff's appeal. Plaintiff then appealed directly to the district court for a trial *de novo* on the issue of the assessed valuation of its land, pursuant to § 39-8-108(1), C.R.S. (1990 Cum.Supp.).

After the presentation of evidence, the trial court found that "the primary purpose of Bowers' use of the subject property is not for farming to obtain a profit...." The trial court then concluded that the property did not meet the definition of "agricultural land" under Colo.Sess. Laws 1983, ch. 426, § 39-1-102(1.6)(a) at 1486-1487 (amended and now codified at § 39-1-102(1.6)(a)(I), C.R.S. (1990 Cum. Supp.)). This appeal followed.

I.

Plaintiff first contends that this court's review must be of a trial *de novo* in the district court and the record of that proceeding, and not a judicial review of the record of the proceedings of the County Board of Equalization as the defendants assert. We agree with plaintiff.

Trial was held on June 8, 1989, before the district court pursuant to § 39-8-108(1), C.R.S. (1990 Cum.Supp.) as a trial *de novo*. A trial *de novo* is commonly understood as a trial anew of the entire controversy, including the consideration of evidence as though no previous action had been taken. *Turner v. Rossmiller*, 35 Colo.App. 329, 532 P.2d 751 (1975).

However, statutes similar to § 39-8-108(1) in foreign jurisdictions anticipate a trial *de novo* to be a proceeding in which the trial court must determine, in way of review, whether the decision of the administrative agency is supported by substantial evidence. *Hawkins v. Texas Co.*, 146 Tex. 511, 209 S.W.2d 338 (1948). Other jurisdictions interpret their subject statute as calling for review by trial *de novo* but along traditional lines of "judicial review," whereby the reviewing court must determine whether, on the facts proven at trial, the administrative agency below acted arbitrarily, capriciously or abused its discre-

tion, or otherwise acted outside of its lawful jurisdiction. *See L.L. Sheep Co. v. Potter*, 67 Wyo. 348, 224 P.2d 496 (1950) (trial *de novo* concerning review of decision by Board of Land Commissioners is limited to a decision whether, on the facts proven, there was an illegal exercise of the Board's discretion, a case of fraud, or a grave abuse of discretion.)

[1, 2] Upon consideration of § 39-8-108(1), we conclude that, in calling for trial *de novo* without limitation, the General Assembly intended that the process of "appeal" lose its character as a review and be considered the same as though it were an original proceeding, with the reviewing court making an entirely independent determination. *See Herzberg v. State ex rel. Humphrey*, 20 Ariz.App. 428, 513 P.2d 966 (1973). Furthermore, we conclude that taxpayers protesting a tax assessment in the trial *de novo* must prove by a preponderance of the evidence that the assessment is incorrect. *See County Board of Equalization v. Board of Assessment Appeals*, 743 P.2d 444 (Colo.App. 1987); § 13-25-127(1), C.R.S. (1987 Repl. Vol. 6A).

Thereafter, review by this court will be based on the findings by the trial court which, if supported by the record, will not be disturbed. *Thomas v. Bove*, 687 P.2d 534 (Colo.App.1984).

II.

[3] Plaintiff next contends that the trial court erred in concluding that the property was not "agricultural land." We disagree.

Colo.Sess. Laws 1983, ch. 426, § 39-1-102(1.6)(a) at 1486-1487, in pertinent part, defines "agricultural land" as "a parcel of land which was used the previous two years and presently is used as a farm ... as defined in [subsection] (3.5) ... of this section...." Subsection 3.5 defines a "farm" 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."

When, as here, the statutory language is plain and its meaning clear, it must be applied as written. *See Heagney v. Schneider*, 677 P.2d 446 (Colo.App.1984).

Here, the trial court concluded that the property was not "agricultural land" because the primary purpose of Bowers' use of the subject property during the three years in question was not for farming with the intent to obtain a profit and that plaintiff failed to meet its burden. We conclude that the findings and conclusions of the trial court are supported by substantial evidence in the record. Accordingly, those findings and conclusions will not be disturbed on appeal. *Adler v. Adler*, 167 Colo. 145, 445 P.2d 906 (1968).

The judgment is affirmed.

HUME and REED, JJ., concur.

CROCOG COMPANY, a partnership, Plaintiff-Appellant,

v.

ARAPAHOE COUNTY BOARD OF EQUALIZATION, Board of Assessment Appeals, and Joseph F. Marceny, Arapahoe County Assessor, Defendants-Appellees.

No. 89CA1601.

Colorado Court of Appeals, Div. V.

Dec. 6, 1990.

Rehearing Denied Jan. 17, 1991.

Certiorari Denied July 29, 1991.

Real property owner challenged assessment of his property for tax purposes. The county board of equalization adjusted and reduced assessed valuation, and owner appealed. The Board of Assessment Appeals affirmed the adjusted valuation, and

UNIQUE CHARACTERISTICS

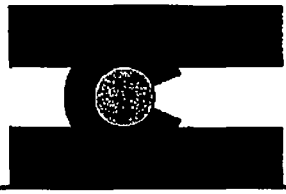
- The valuation and classification of Ag land is provided as part of the general property valuation statute that includes the cap rate.
- Procedures are developed by the DPT, approved by SBOE.
- All procedures are reviewed by LLS for conformance to statute.

UNIQUE CHARACTERISTICS

Colorado Constitution

...the actual value of agricultural lands, as defined by law, shall be determined solely by consideration of the earning or productive capacity of such lands capitalized at a rate as prescribed by law.

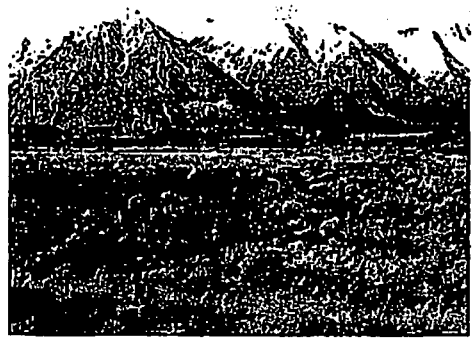
Article X, section 3



STATUTORY DEFINITIONS

39-1-102(1.6)(a), C.R.S.

"Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

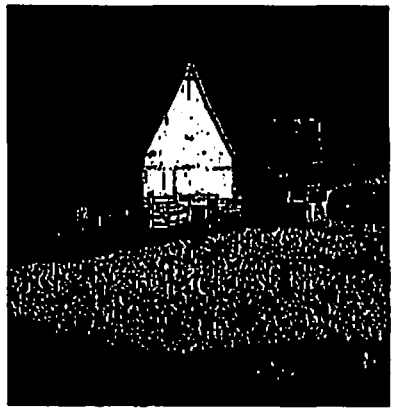


1

STATUTORY DEFINITIONS

39-1-102(1.6)(a)(I), C.R.S.

- Can be located in town or out
- Regardless of zoning
- Must have been used the previous two years, and
- Currently used as farm or ranch
- Or in the process of being restored thru conservation



1

STATUTORY DEFINITIONS

39-1-102(1.6)(a)(I), C.R.S.

- Must have been classified or eligible to be classified during ten years preceding
- Must continue to have Ag use

1

STATUTORY DEFINITIONS

39-1-102(1.6)(a)(I), C.R.S.

- Includes land under residence
- Includes land under other buildings if integral part, and if
- The land is typically used as an ancillary part of operation
- Does not effect Ag class if used for hunting and fishing
- If being restored must have plan in writing

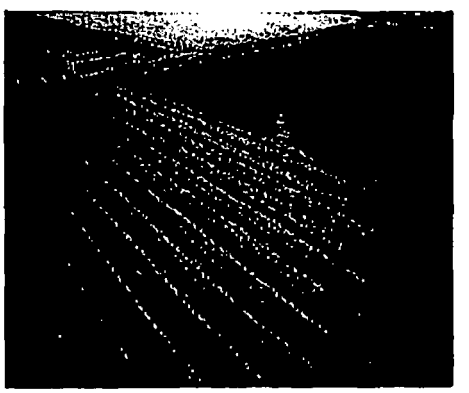
1

STATUTORY DEFINITIONS

39-1-102(3.5), C.R.S.

<u>Farm:</u>

- Land used to produce Ag products that
- Originate from land's productivity
- Primary purpose is to obtain a monetary profit

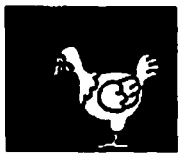


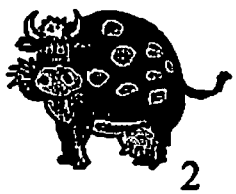
2

STATUTORY DEFINITIONS

39-1-102(1.1), C.R.S.
Agricultural and Livestock Products:

- Plant or animal products
- Raw or unprocessed
- Derived from science & art of agriculture
- Regardless of the use
- Regardless of who purchases



2

STATUTORY DEFINITIONS

39-1-102(1.1), C.R.S.
Agriculture:

- Farming
- Ranching
- Animal Husbandry
- Horticulture




2

STATUTORY DEFINITIONS

39-1-102(13.5), C.R.S.

Ranch:

- Land used to graze livestock
- Primary purpose of obtaining monetary profit
- Livestock = Domestic animals used for:
  - Food
  - Breeding
  - Draft
  - Profit

3

STATUTORY DEFINITIONS

39-1-102(1.6)(a)(II), C.R.S.

Forest land:

- Forested land must be at least 40 acres
- Must produce tangible wood products that
- Originate from the productivity of the land for the
- Primary purpose of obtaining monetary profit
- Subject to management plan with CSFS
- Not already a farm or ranch
- Includes land under residence

4

STATUTORY DEFINITIONS

39-1-102(1.6)(a)(III), C.R.S.

Conservation easements:

- Parcel of land at least 80 acres
- Can be less than 80 if no residence
- Subject to perpetual conservation easement
- Must be classified as Ag at the time easement is granted
- Easement must be granted to qualified organization exclusively for conservation purposes
- Current & contemplated future uses described in easement
- Does not include commercial or residential uses

5

UNIQUE CHARACTERISTICS

General Valuation Statute

...The actual value of agricultural lands, exclusive of building improvements thereon, shall be determined by consideration of the earning or productive capacity of such lands during a reasonable period of time, capitalized at a rate of thirteen percent....

39-1-103(5)(a), C.R.S.

7

STATUTORY DEFINITIONS

39-1-103(5)(a), C.R.S.

Regarding Conservation Easements:

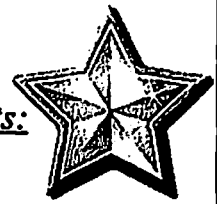
...shall continue to be valued as Ag except that, if any portion of land is actually used for nonagricultural commercial or **NONAGRICULTURAL** residential purposes, that portion shall be valued according to use....

5

STATUTORY DEFINITIONS

39-1-103(5)(a), C.R.S.

Regarding Conservation Easements:



Nothing in this subsection (5) shall be construed to require or permit the reclassification of agricultural land or improvements, including residential property, due solely to subjecting the land to a perpetual conservation easement.

5

STATUTORY DEFINITIONS

39-1-102(1.6)(a)(IV), C.R.S.

Decreed water right:

- Can be in town or out
- Regardless of zoning
- Currently used as farm or ranch
- Must have decreed right to appropriated water
- Water not for residential use
- Water must be used for the production of Ag or livestock products

6

STATUTORY DEFINITIONS

39-1-102(1.6)(a)(V), C.R.S.

Reclassified land:

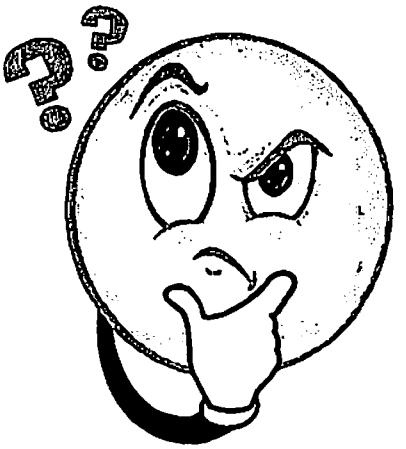
- Can be in town or out
- Regardless of zoning
- Has been reclassified from Ag
- Met definition of Ag as in (I) through (IV) 3 years previous

7

Supreme Court Cases

MDC & EDITH CLARKE

? QUESTIONS???? ?



Agricultural Presentation

To the

HB1293 Taskforce

July 8, 2010

Colorado Agriculture

- Cash farm receipts, $5.5 billion
- Provides more than 105, 000 jobs
  - 4.4% of the state's total
  - $16 billion to the state's economy
- Export more than $840 million in products
- Colorado agriculture ranks 2nd in terms of impact to the state's economy

Top 5 Colorado Agricultural Commodities

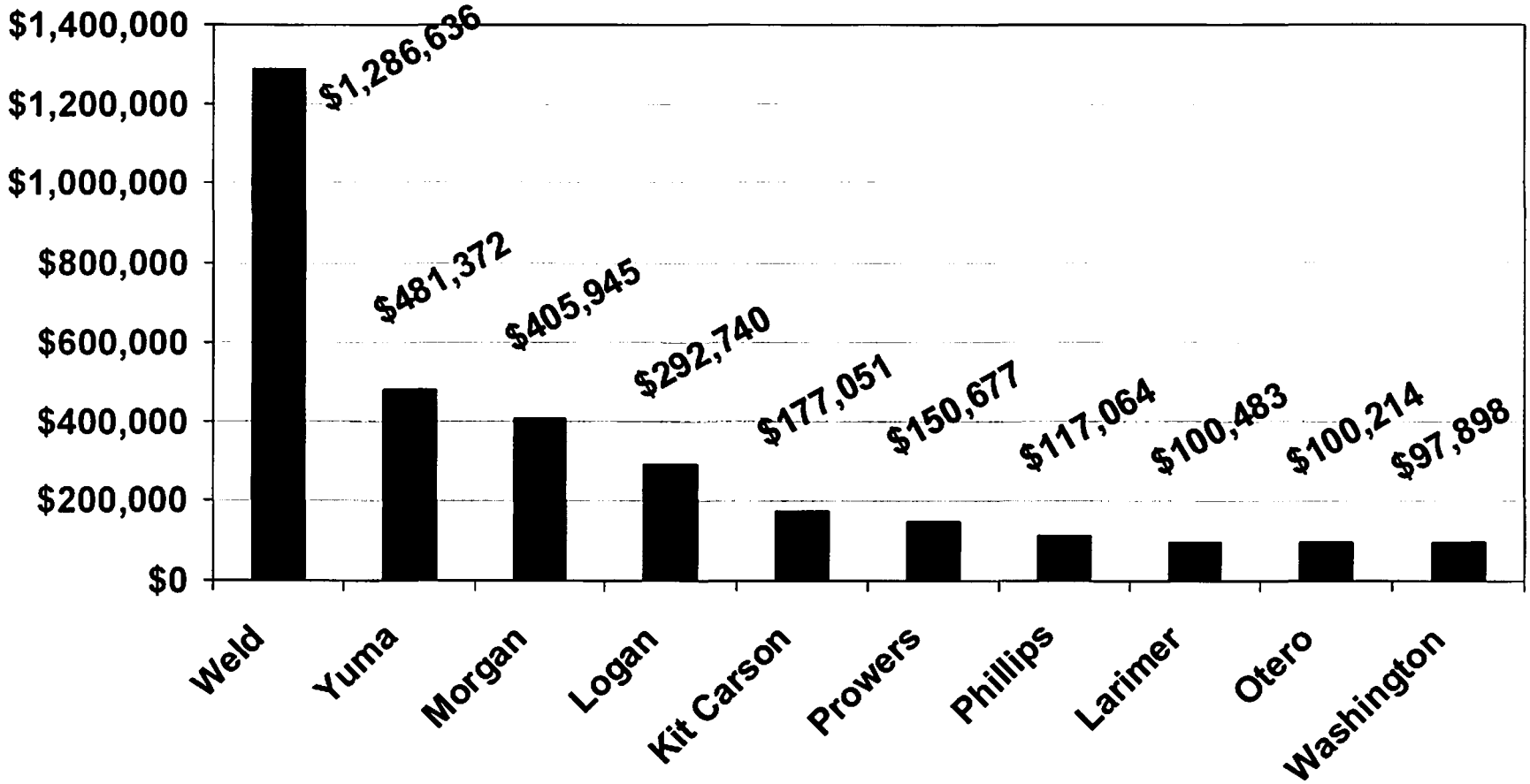
Source: USDA, ERS

1. Cattle and calves
2. Dairy products
3. Corn
4. Greenhouse / nursery
5. Hogs

Top 10 Ag Counties in Colorado

Products Sold ($1,000)

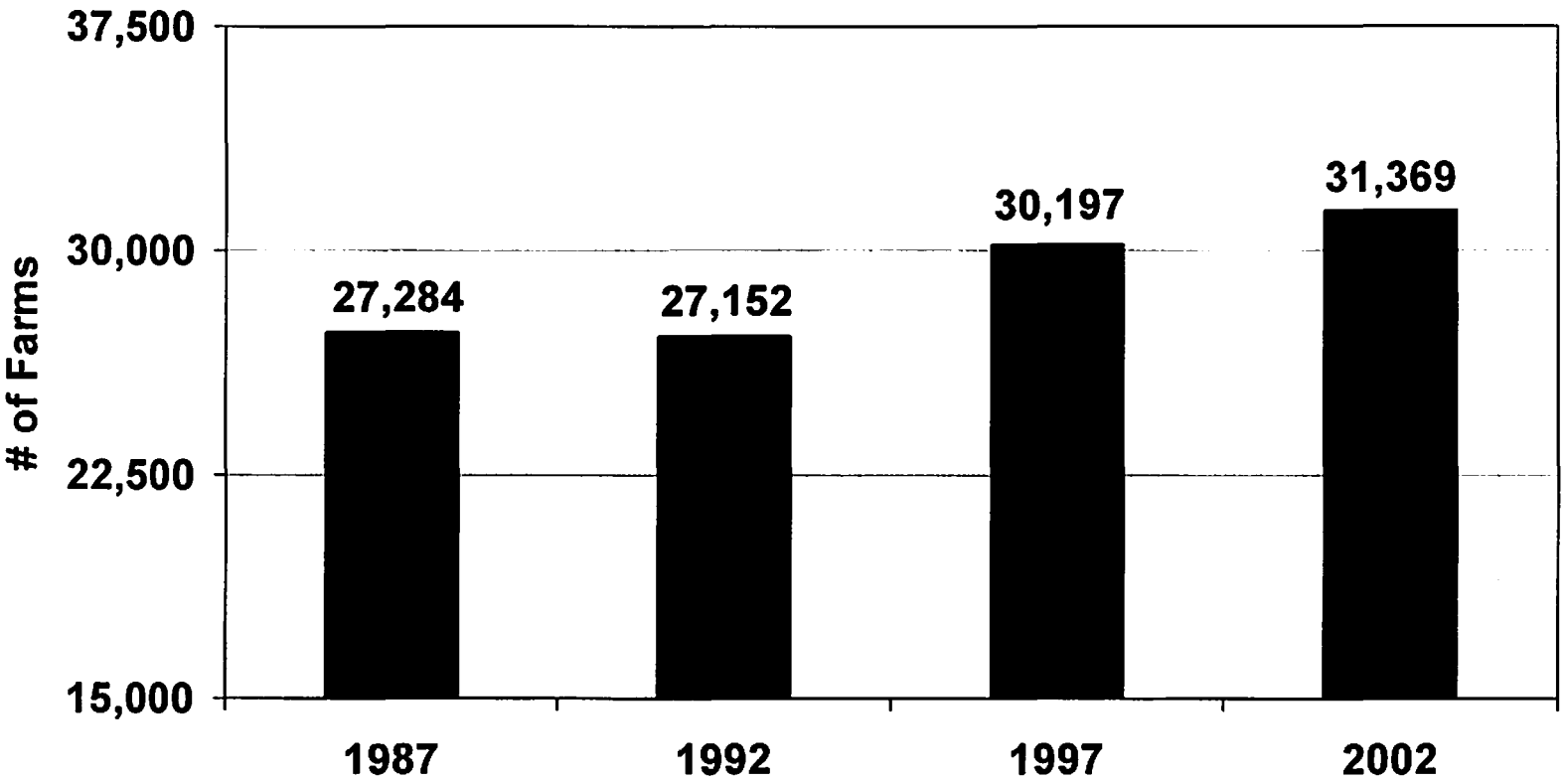
Source: Colorado Ag Statistics, 2003



- ✓ Over 30% of the Colorado counties are dependent upon agriculture
- ✓ Nearly 50% of Colorado's 66 million acres are farms and ranches

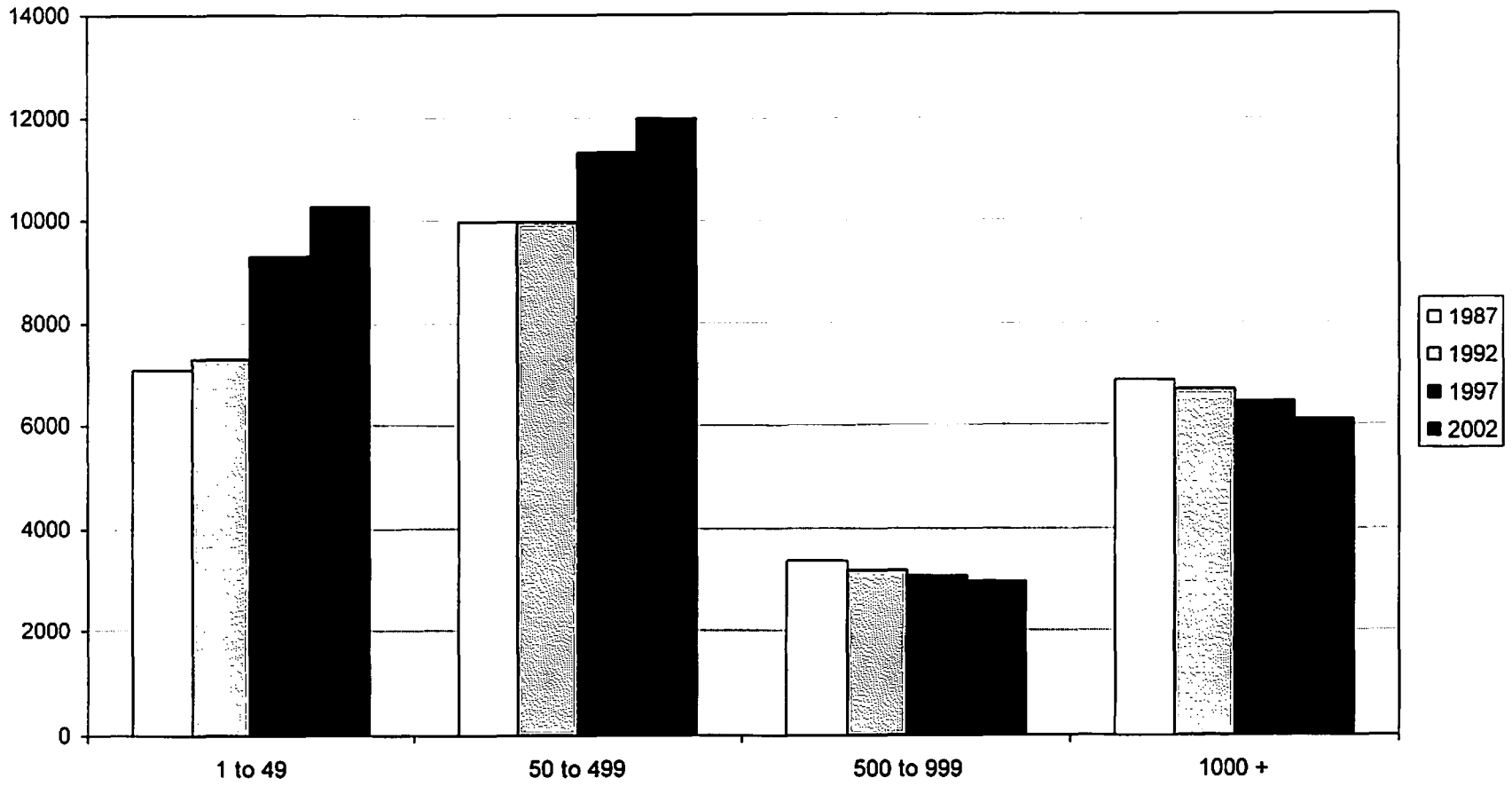
Total Farms – Colorado

Source: USDA, NASS 2002 Census of Ag



Average Farm Size

Source: USDA, NASS 2002, 1992 Census of Ag



Ag Land Conversion

- Between 1997 and 2002 Colorado lost 1.26 million acres of agricultural land, averaging 690 acres per day
- By 2022 Colorado will lose 3.1 million more acres of agricultural land.
- The Colorado Conservation Trust estimates a greater than $1 billion gap in funding to curb land conversion

How Does This Correspond with the 1293 Task Force and Agriculture Property Tax Valuation?

Agriculture: the Fiber of Colorado

- Americans spend less on food than any other country in the world.
- U.S. and Colorado agriculture are world leaders in food and fiber production.
  - Farmers and ranchers have adapted and increased productivity with fewer resources.
- Colorado agriculture provides a set of values unique to rural living:
  - A way of life and spirit that instills a sense of hard work and determination
  - A way of life and spirit that believes in being good stewards of the land
  - A way of life and spirit that believes in strong community and family bonds
  - Farmers and ranchers provide a source of "rural ethos" for the entire state.

Agriculture Property Valuation

- Meet 1 of 5 Requirements
  - Farm/Ranch/Conservation Restoration
  - +40 Acres Forest Land with Management Plan
  - Conservation Easement with Criteria
  - Water Right with Criteria
  - Reclassification with Criteria

✓ About the Use of Land, Not the Person Who Owns It.
✓ Does Not Attempt to Define "Bona Fide Agriculture".
✓ Does Not have Stipulations About Leasing the Land
✓ Does Not Dictate Income Parameters

Appendix 3

July 29th Meeting Materials

Agricultural Classification Task Force

Agenda for 2nd Meeting

Date: Thursday, July 29th
12:30 – 4:30
Colorado Counties, Inc

❖ Introductions	12:30 – 12:40
❖ Approval of July 8th Meeting Minutes	12:40 – 12:50
❖ Beyond Anecdotes: Identification of the Problem	12:50 – 1:50
❖ BREAK	1:50 – 2:00
❖ Task Force Member Discussion	2:00 – 3:50
❖ Public Comment	3:50 – 4:20
❖ Next Steps o Agenda Items for Next Meeting	4:20 – 4:30

If you wish to join by conference call, here's the information you'll need to do so:
Conference Dial-in: 1.888.809.4012
Passcode: 8614076

Housekeeping Reminders:

1.) Please turn your microphone on when you wish to speak and identify who you are for those on the phone
2.) All handouts from this meeting and the last meeting are on CCI's website (www.ccionline.org). Click on 'Announcements' and scroll to the bottom of the page
3.) Next Meetings:
   a. Wednesday, August 18th 12:30 – 4:30 p.m. at CCI
   b. Wednesday, September 8th 12:30 – 4:30 p.m. at CCI

HB-1293 Agriculture Classification Task Force

July 29, 2010

Meeting Minutes

Attendees

Task Force Members: Brad Hughes, Ken Hood, JoAnn Groff, Alan Foutz, Tim Canterbury, Kent Peppler, Hap Channell, Gene Pielan, Frank Weddig (absent)

Others: Keren Prior (Archuleta County Assessor), John Stulp (State Commissioner of Agriculture), Kai Turner (Rio Blanco Commissioner), Karen Miller (Assessor Association), Troy Bredenkamp (Colorado Farm Bureau), Dave Wissel (Park County Assessor), Shawn Snowden (Division of Property Taxation), Kyle Hooper (Division of Property Taxation), Stephanie Thomas (Colorado Environment Coalition), Becky Brooks (Colo. Corn Growers), Steve Spedden (Arapahoe County Assessor's office), Corbin Sakdol (Arapahoe County Assessor), Landon Gates (Colo. Dairy Producers), Brock Herzberg (Colo Dairy Producers).

On Phone: Deborah Early (Icenogle, Norton, Smith, Gilida & Pogue), Dick Ray (Colo. Outfitters Assoc.), Andy Donlan, Susan Atkinson (La Plata County Assessor)

Review of minutes of July 8, 2010 meeting

Motion to approve of minutes by Commissioner Channell, second by Ken Hood. approved unanimously.

Beyond Anecdotes: Identification of the Problem

Brad Hughes the Montrose County Assessor gave a PowerPoint presentation on some specific problems with Ag classification. He discussed the primary issues for the assessors in classifications of property, and the responses he got back from assessors to that issue. He listed nine issues from the assessors. He also stated that the primary concern for the assessors was equality. He showed the task force nine specific examples of issues with Ag classifications and how it is applied under the current law. Brad then gave another PowerPoint presentation from the Arapahoe County Assessor concerning specific problems with the classification in an urban area. He presented five examples of problems with the classification in Arapahoe County. Dave Wissel stated that the East slope was generally not the problem but it is more likely to occur in resort communities and the issue is a "mixed use" issue in making the classification. There were no questions from the members on either presentation.

Chairperson JoAnn Groff stated they had some additional information on how two other states handle Ag classifications, those being Wyoming and New Mexico. That information will be available on the CCI website if anyone would like to see it. Shawn Snowden gave a brief presentation on those states. He also stated that whatever the task force does on Ag will have an effect on residential classification, and that changes should happen with Ag and not residential.

Members of the Ag community reiterated their collective concern on where this is going and the unintended consequences to whatever is changed may have to the Ag producers. They saw some common sense problems with the current law but not sure how we fix them. We need to figure out a way to tax the million dollar home without giving up the Ag to the legitimate Ag operation.

Commissioner Channell stated that inequality is what we need to focus on. Any solution must pass the test of being fair to the Ag people as well as others. We must ensure that legitimate Ag operations are protected. We have a responsibility to make the system better and to look for solutions that may help the assessors make their determinations. Brad Hughes stated that this is an equity issue not a revenue issue and that we need to look at the primary purpose of the whole property when taxation is applied.

A Question and Answer session followed. Some specific questions followed concerning some of the examples that were brought forth by the assessors. Is the main issue the land under the house or the whole property? The problem under current law is that the two cannot be separated for purposes of taxation. There was some more discussion on that issue from several parties.

Chip Taylor stated that there are numerous issues related to the Ag exemptions and that this group may want to look at a mixed use approach which may get to a majority of the issues. It may allow us to take a step forward together as a task force. Troy Bredenkamp agreed that there may be common ground to move forward on the residential property but if the land around it is Ag it should remain the same. He also spoke to the problem of "primary use". Brad Hughes stated that it would be a problem to set up several classes for assessment.

Troy Bredenkamp asked what an Ag/Residential class would look like.

Kyle Hooper asked that the group consider "duration for grazing" as they move forward. His hope is that by clarifying this portion of the statute they would be able to apply the language more consistently.

John Stulp asked if the assessors had ever quantified the loss of revenue. He also cautions to make sure we stay with intended use moving forward.

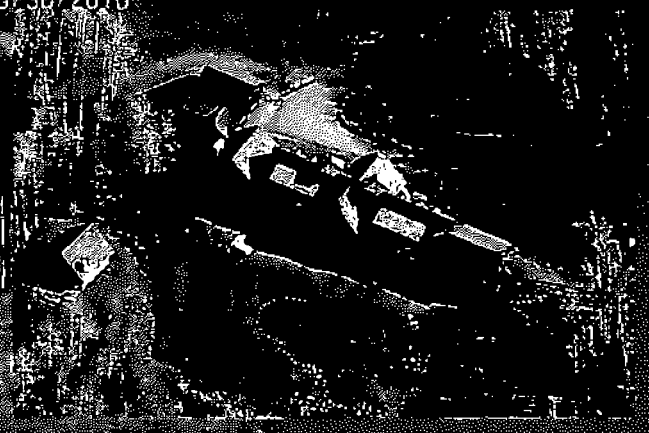
Commissioner Channell asked DPT to review language of the current statute and come back with any changes in language they would like to see.

The task force went through the list of Conclusions that was given in the assessor's PowerPoint presentation to see what issues they would like to move forward on. Those were identified as;

- **Ag/Residential classification**
- **Primary purpose/ use criteria (mixed use)**
- **Duration requirement for grazing**

Meeting adjourned at 3:50PM

Next meeting Wednesday August 18th at 12:30Pm



Agricultural Classification in Colorado: What are the Issues & Problems for Assessors?

Agricultural Classification Task Force

"Second" Meeting : July 29, 2010

Primary Issues for Assessors

After our first agricultural classification task force meeting I sent a survey/questionnaire to all 64 Colorado County Assessors:

One of the questions I asked them was:

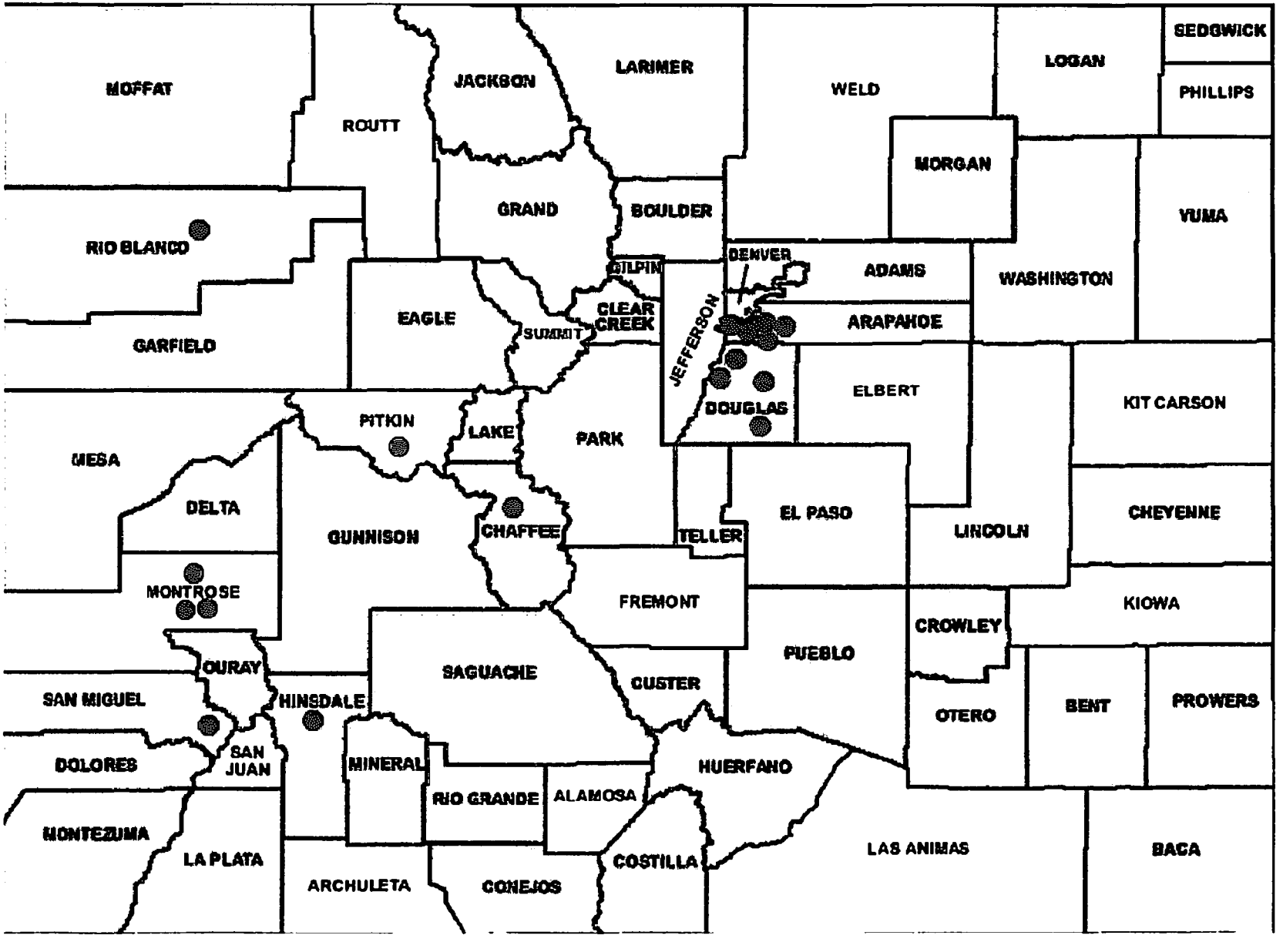
WHAT IS THE MOST PROBLEMATIC AGRICULTURAL CLASSIFICATION SITUATION IN YOUR COUNTY?

The following is a summary of their responses:

- Small vacant residential home sites having incidental agricultural usage.
- 35 acre and under subdivided lots with minimal agricultural use.
- Incidental usage of grazing land with no duration requirement.
- Platted subdivisions receiving agricultural classifications.
- Minimal agricultural usage within a larger tract of land.
- Small commercial tracts with limited feasible agricultural usage.
- Terrain that is not suitable for agricultural usage.
- Explaining to taxpayers the huge disparity between agricultural and non-agricultural classifications.
- Small hobby farms with a primary use of a residence getting agricultural classification based on a secondary use.

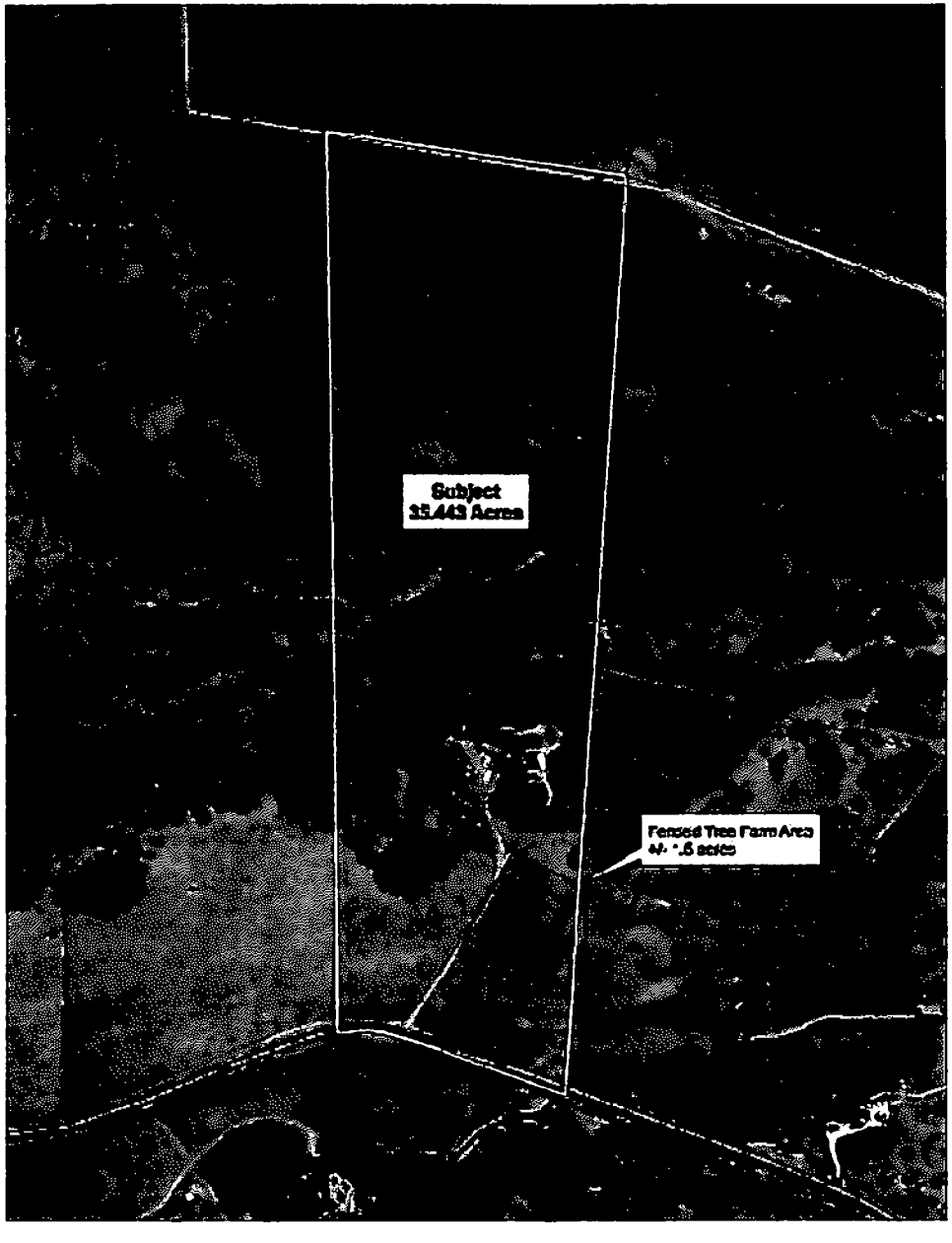
EQUALITY is the Assessors' primary concern.

Examples of **12** agricultural classification issues across the state of Colorado



Example #1:
Minimal Agricultural Usage
Within a Larger Tract

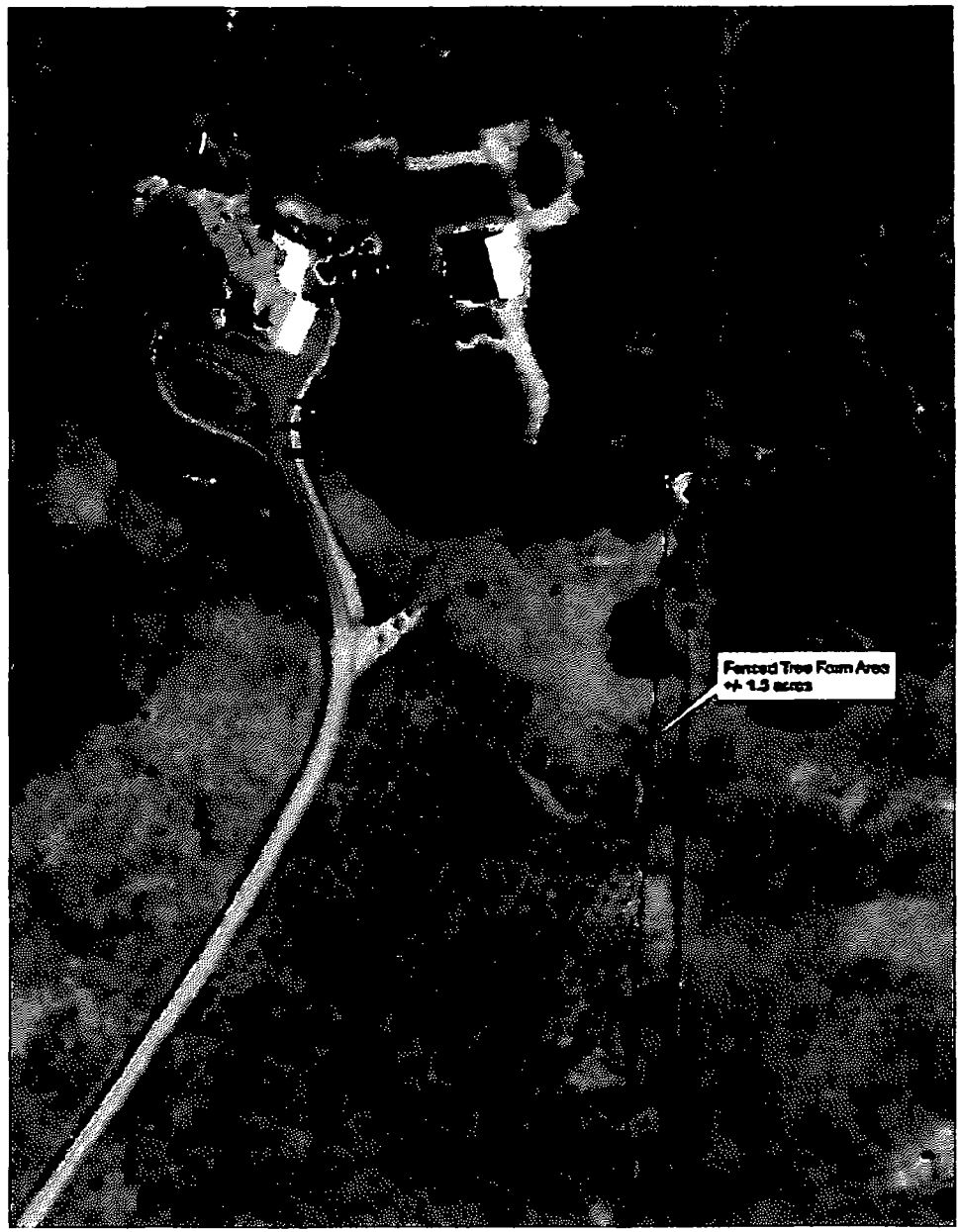
- Property located in Douglas County, Colorado. It is currently under appeal and is pending litigation.
- Subject property is 35.443 acres & includes a $523,198 single family residence.
- Property contains a **1.5 +/- acre** "tree farm".
- There is no additional agricultural use on the remaining 33.943 acres.
- Market value of the land is **$435,000** classified as residential.
- As agricultural, the land value would be **$1,808.**
- The owner has submitted supporting income tax documentation, including sales receipts and expenses for the "tree farm".
- Annual tax savings to owner due to the presence of a small "tree farm" would be **$2,758 per year.**



Example #1:
Minimal Agricultural Usage Within a Larger Tract (Continued)

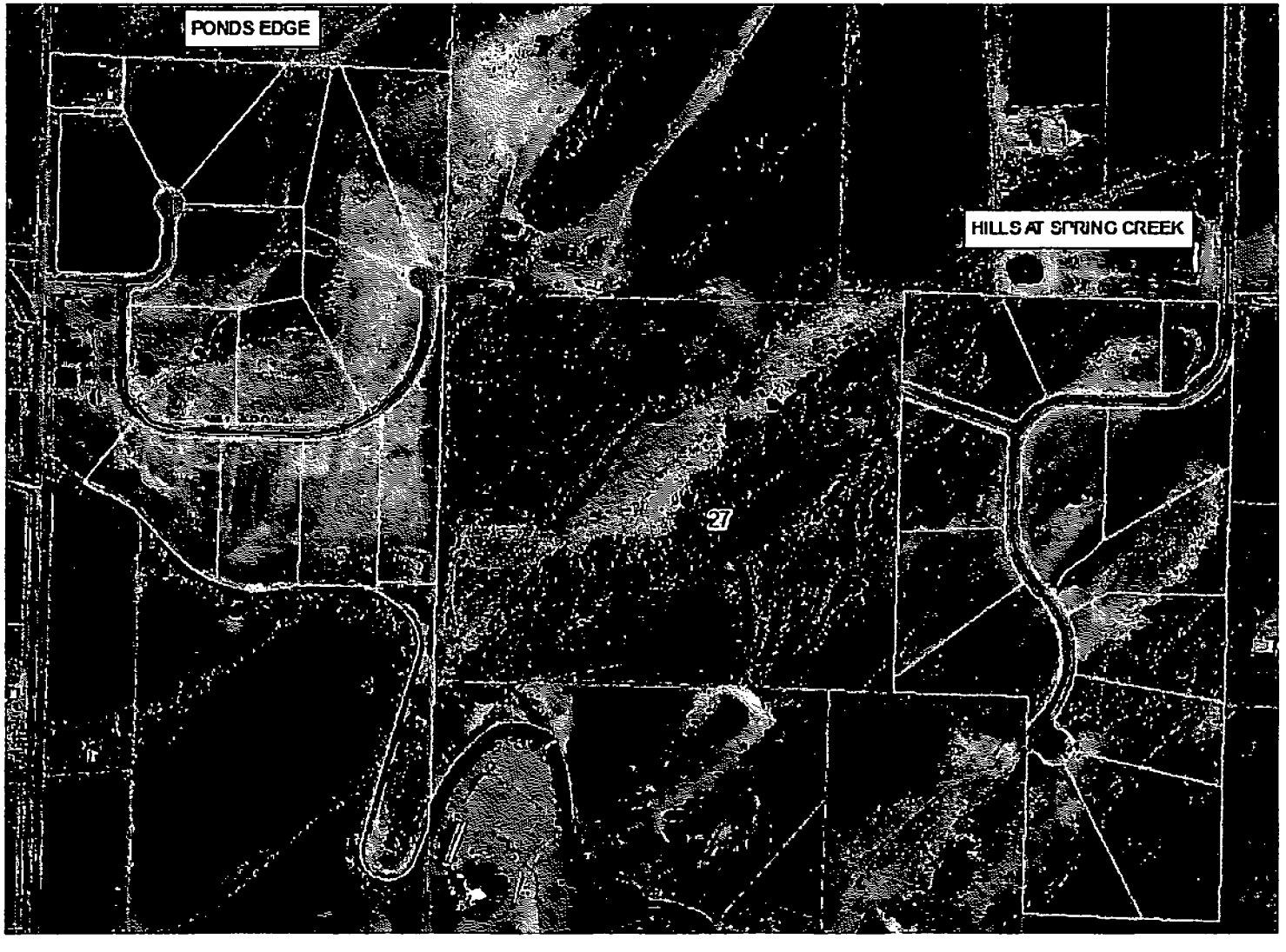
- Another aerial photo of the $968,530 residential property with an incidental 1.5 acre "tree farm" that is requesting agricultural property tax classification.

- This situation creates inequity amongst other residential homeowners within this subdivision, due to a SECONDARY land use. The PRIMARY use and PRIMARY PURPOSE of this land is a residential home site. The 1.5 acre "tree farm" is a secondary use.



Example #2:
Comparison of Two Platted Subdivisions with Full Infrastructure In Place and Different Classifications

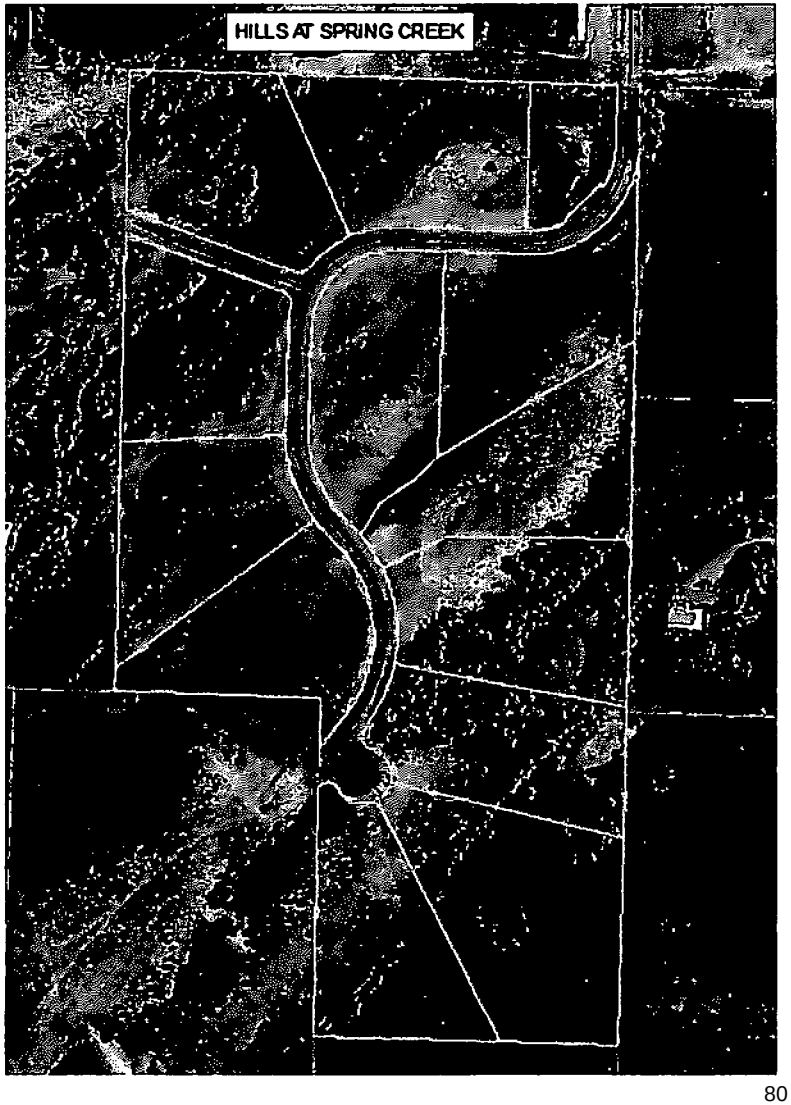
- Proximity of Two Competing Subdivisions: Inequity



Example #2:
Comparison of Two Platted Subdivisions with Full Infrastructure In Place and Different Classifications

Subdivision A: Agricultural Classification

Subdivision B: Vacant Land Classification



Example #2:
Comparison of Platted Subdivisions with Full Infrastructure In Place and Different Classifications (Continued)

Subdivision A: Agricultural Classification

- 13 lots in subdivision
- Lot sizes (3 - 4 acres)
- All utilities and streets in place.
- Currently marketed for sale at $100,000 to $130,000 per lot.
- Incidental grazing, hay and stock water is hauled. Electric fence contains 4-6 cows for approximately one week per year.
- Agricultural classification values range from $300 – $1520 per lot.
- Developer's tax annual tax liability per lot, as classified agricultural **$10.60.**
- Developer's total tax liability for 13 lots in 2009 was **$137.50.**

Subdivision B: Vacant Land Classification

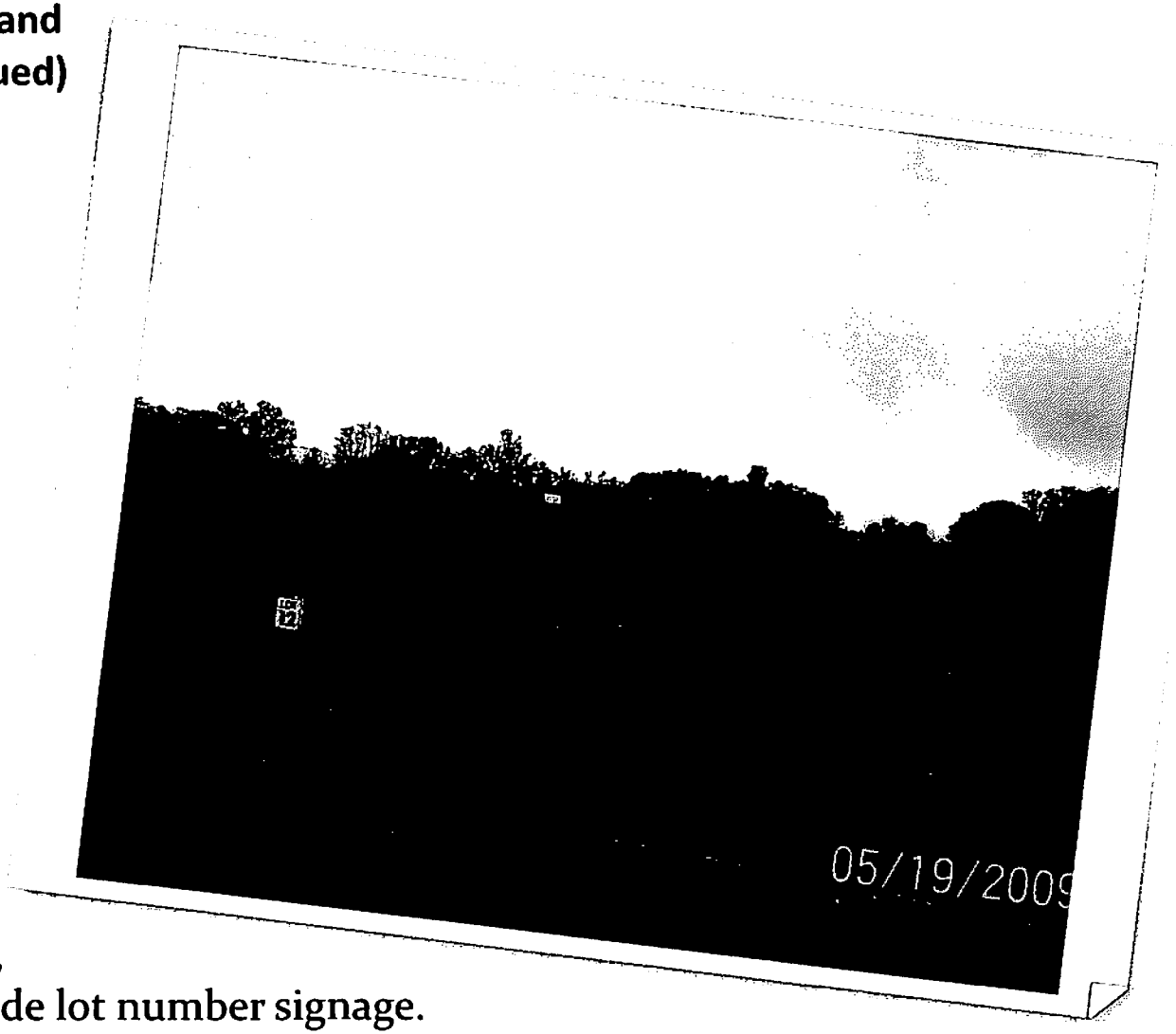
- 12 lots in subdivision
- Lot sizes (3 - 4 acres)
- All utilities and streets in place.
- Currently marketed for sale at $100,000 to $200,000 per lot.
- No incidental grazing.
- Vacant land valuations are $125,000 per lot.
- Developer's tax annual tax liability per lot, as classified vacant **$1516.72.**
- Developer's total tax liability for 12 lots in 2009 was **$18,200.64.**

Example #2:

Comparison of Two Platted Subdivisions with Full Infrastructure In Place and Different Classifications (Continued)

Sample Photo of a Lot Within Subdivision A:
Pond's Edge Subdivision

- This is a photo of one of the 13 subdivided lots receiving an agricultural classification based on incidental cattle grazing. The determination was given to the owner during a binding arbitration appeals hearing.



- Notice the sparse native feed, paved streets and the subdivide lot number signage. An electric fence is used for containment of the livestock.

Example #3: Vacant Tract with Limited Agricultural Use

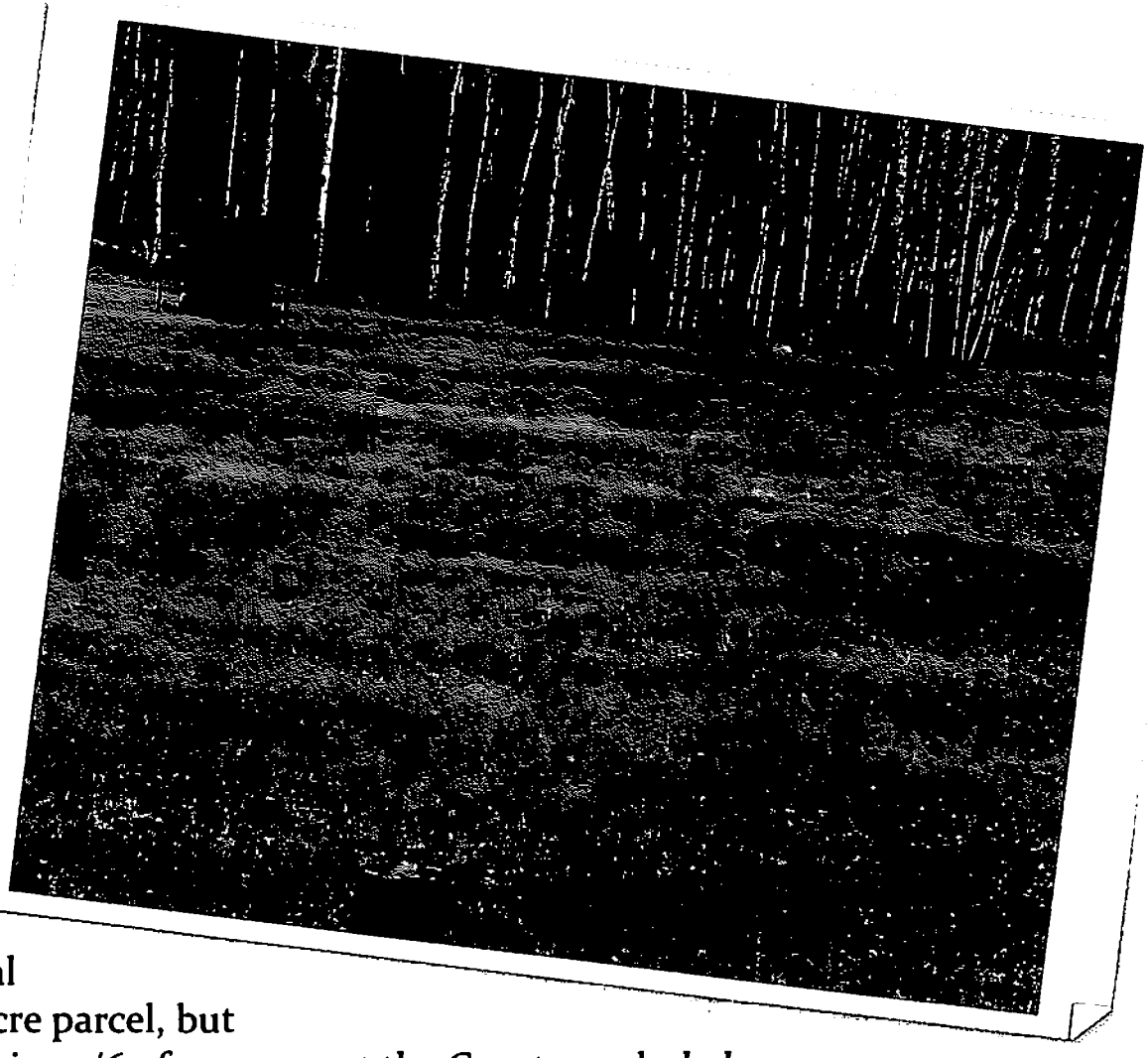
- Property is located in Douglas County near Castle Rock, Colorado.
- Property is vacant and consists of 35 acres.
- Market value as a residential home site is **$485,000**.
- Owner submitted federal income tax forms (Schedule F) showing incomes of $100 in 2007, $50 in 2008, and $100 in 2009.
- For 2007, **$100** in hay production resulted in a tax savings of **$10,432.**
- For 2008, **$50** in hay production resulted in a tax savings of **$11,183**.
- For 2009, **$100** in hay production resulted in a tax savings of **$12,650**.

Example #4:
Small Vacant Tract with Limited Agricultural Use

- Property located in Hinsdale County, near Lake City, Colorado.
- Property was reclassified from vacant to agricultural in 2010 by the District Court.
- Property is **3.9 acres**; consisting of a small meadow area (as shown) with remaining acreage in mountainous terrain.
- No irrigation water.
- Owner originally claimed grazing of horses and hay production on approximately **1 acre** of this parcel. Once he determined that horses did not qualify, he indicated strictly hay production.
- This property was listed for sale in 2008 for $299,000.

Example #4: Small Vacant Tracts with Limited Agricultural Use (Continued)

- Photo: As taken from the District Court decision; *"The fact that plaintiff did not remove the "squeeze chute" to slightly increase hay production on that roughly one acre does not persuade the Court that this area was not hayed."*



- Problem: Without any duration, income, yield, or acreage requirements the Court was forced to grant agricultural classification due to nominal/incidental hay production on this property.

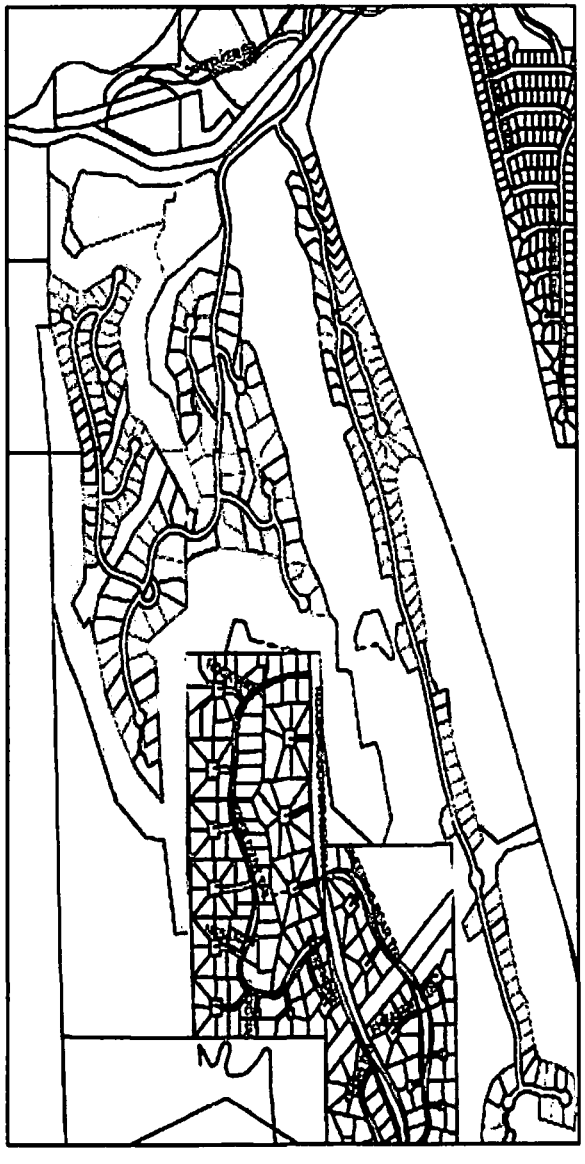
Note:

Owner also tried to get an agricultural classification on the adjacent 3.038 acre parcel, but was denied. He tried seeding a fertilizing 1/6 of an acre, yet the Court concluded, *"...the Court finds that the geography of the lot makes any possible hay production on that parcel de minimus, at best, if not impossible."*... It was also listed for sale in 2008 for $299,000.

Example #5:
Vacant Subdivided Lots in
Established Golf Course Community

- Property located in Douglas County, Colorado. It is a gated, high-end, private golf course community.
- Agricultural classification has been requested on 168 vacant residential lots.
- Lots are .20 to 1.2 acres in size.
- Market value of lots between $189,000 and $710,000 per lot.
- These lots are platted and 100% of their infrastructure is in place.
- Intent is to graze goats on only those lots owned by the developer.
- Portable electric fencing will contain the goats and will be moved from area to area as vegetation allows.
- The total actual market value of these lots is: **$29,238,009**.
- The total actual value of these lots with an agricultural grazing classification is **$2,460**.
- The annual loss in tax revenue from these sites would be approximately **$1,286,000**.

Developer owned sites to be grazed
(excepting out the golf course parcels)



Agricultural Sales Comparing Assessor's Agricultural Value with Actual Sale Price

Agricultural Vacant Land Sales

Acct. No.	Legal	Assessor's Actual Value	Land Size	Sale Price	Sale Date
R019656	Stage Road PUD, lot 2	$100	2.14	$4,500,000	1/17/2007
R019655	Stage Road PUD, lot 1	$100	2.47	$4,200,000	6/24/2008
R012569	Lazy O Ranch, lot 6	$100	2.494	$1,535,000	2/15/2008
R019658	Stage Road PUD, lot 4	$5,400	9.49	$6,700,000	9/26/2007
R019659	Stage Road PUD, lot 5	$5,500	9.64	$6,800,000	9/26/2007
R017310	M&B Emma	$4,300	9.99	$900,000	2/26/2007
R013750	Aspen Valley Downs Lot 8	$2,200	11.558	$3,150,000	1/8/2007
R013751	Aspen Valley Downs Lot 9	$2,700	12.679	$3,300,000	7/28/2006
R019660	Stage Road PUD, lot 6	$8,800	15.31	$6,600,000	4/18/2007
R013749	Aspen Valley Downs Lot 7	$3,100	17.222	$3,000,000	1/8/2007
R006795	M&B Thomasville	$5,700	34.95	$675,000	9/6/2006
R018574	Chaparral Aspen Lot 6	$8,700	35.045	$3,600,000	5/15/2007
R019524	M&B Maroon Creek	$5,200	35.1	$4,520,000	11/15/2007

Agricultural Residential Sales

Acct. No.	Legal	Assessor's Value	Land Size	Sale Price	Sale Date
R020278	Crown Mtn Ranch, Lot 3	$222,900	8.03	$1,900,000	5/15/2007
R007485	Crystal River Park	$936,900	10.36	$1,237,400	10/19/2007
R019668	Stage Road PUD, lot 1	$3,766,900	35	$12,950,000	1/16/2007
R006561	M&B, Emma	$1,429,300	35.74	$4,000,000	10/3/2006
R006957	M&B West Sopris Creek	$3,626,500	35.78	$3,800,000	4/16/2007

Example #6:
Vacant and Residential Sales with Agricultural Classification

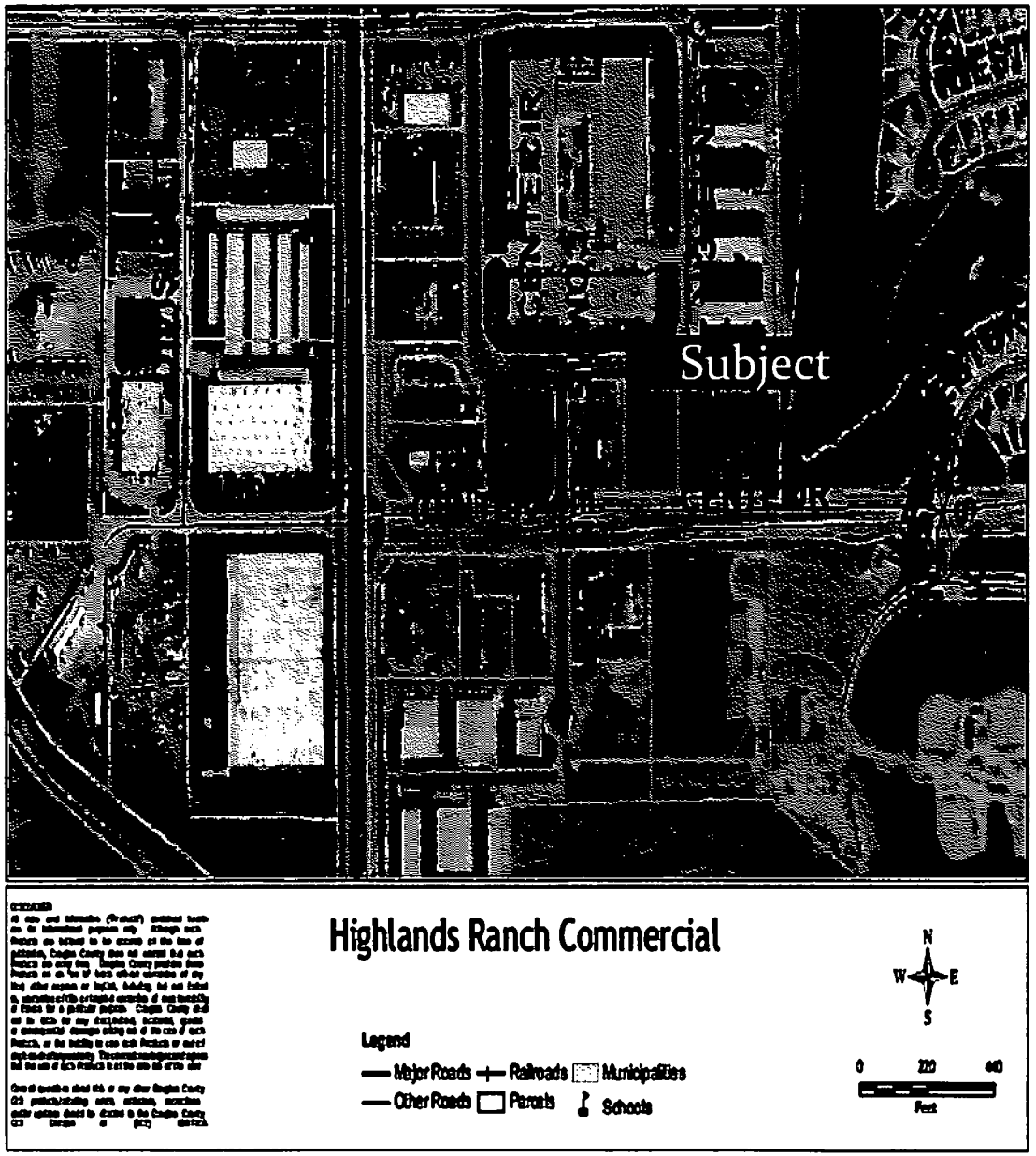
- Properties are located in Pitkin County, Colorado. (Near Aspen)
- Comparison of Actual Sale Prices to Assessor Agricultural Land Values

Example #7:
Primary residential use with incidental grazing.

- Property location is Chaffee County, Colorado.
- Lot is 18.44 acres.
- Purchased lot in 2004 for $375,000 by an out-of-state owner.
- Currently receiving an agricultural classification based on "grazing".
- Primary purpose is as a residential home tract with a secondary grazing use.

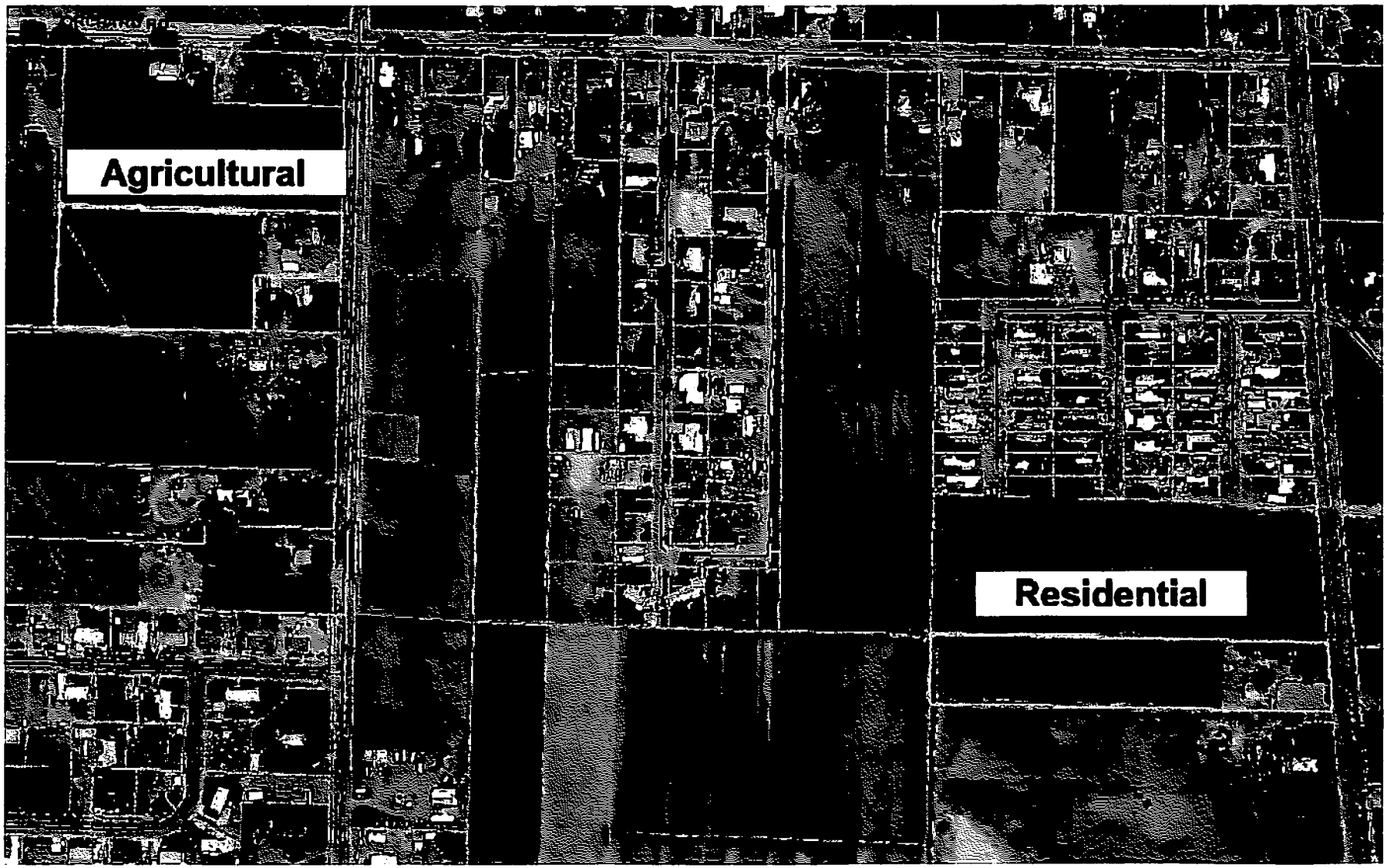
Example #8:
Small Commercial Tract with Limited Agricultural Use

- Property is located in Highlands Ranch, Douglas County, Colorado.
- Parcel is **1.2 acres**, and is zoned commercial.
- Grazing lease indicates a maximum duration of 20 days per year for grazing.
- Value if commercial vacant: $425,000
- Taxes if classified as commercial vacant: **$11,739.93**
- Value as agricultural land: $38.
- Taxes this owner is paying as agricultural: **$0.95/year**



Example #9:
Comparison of two similar small acreage residential parcels.
One is receiving the agricultural classification the other is not.

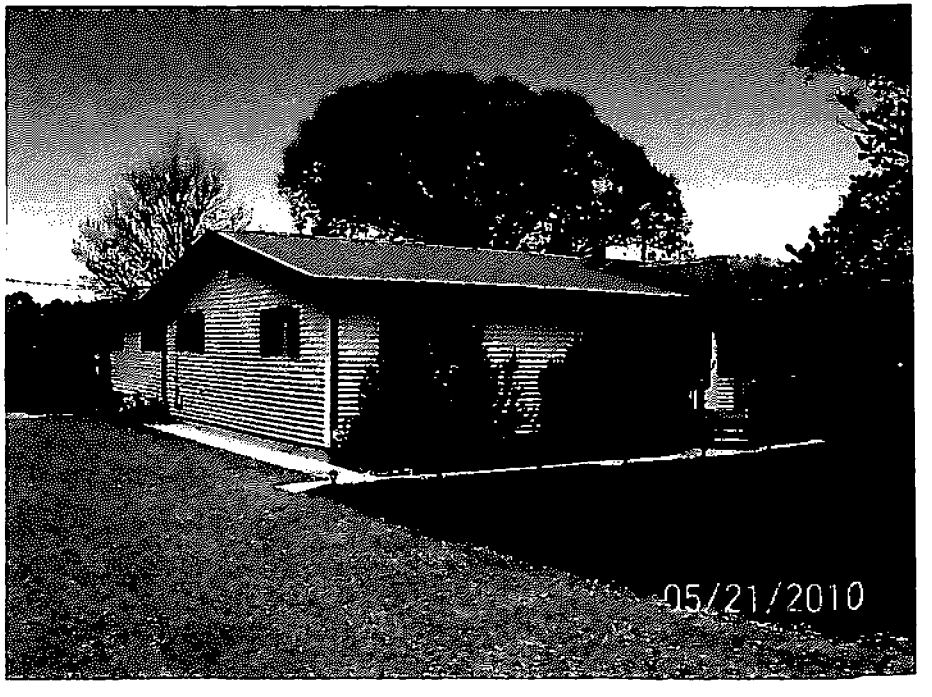
- Comparison of Two Small "Hobby" Farms: Inequity



Example #9:
Comparison of two similar small acreage residential parcels.
One is receiving the agricultural classification the other is not. (Continued)

- Not classified as agricultural.
- Land Size: **3.406 acres** in Montrose, Colorado.
- Graze 2 pleasure horses.
- Market land value: **$85,000**
- Taxed paid on land portion: **$408.05/year**
- Primary purpose is a residence and the secondary use is a "hobby" farm.

- Classified as agricultural.
- Land Size: **3.528 acres** in Montrose, Colorado.
- Cuts grass hay, sells to pleasure horse owners.
- Agricultural land value: **$1,960**
- Taxed paid on land portion: **$34.25/year**
- Primary purpose is a residence and the secondary use is a "hobby" farm.



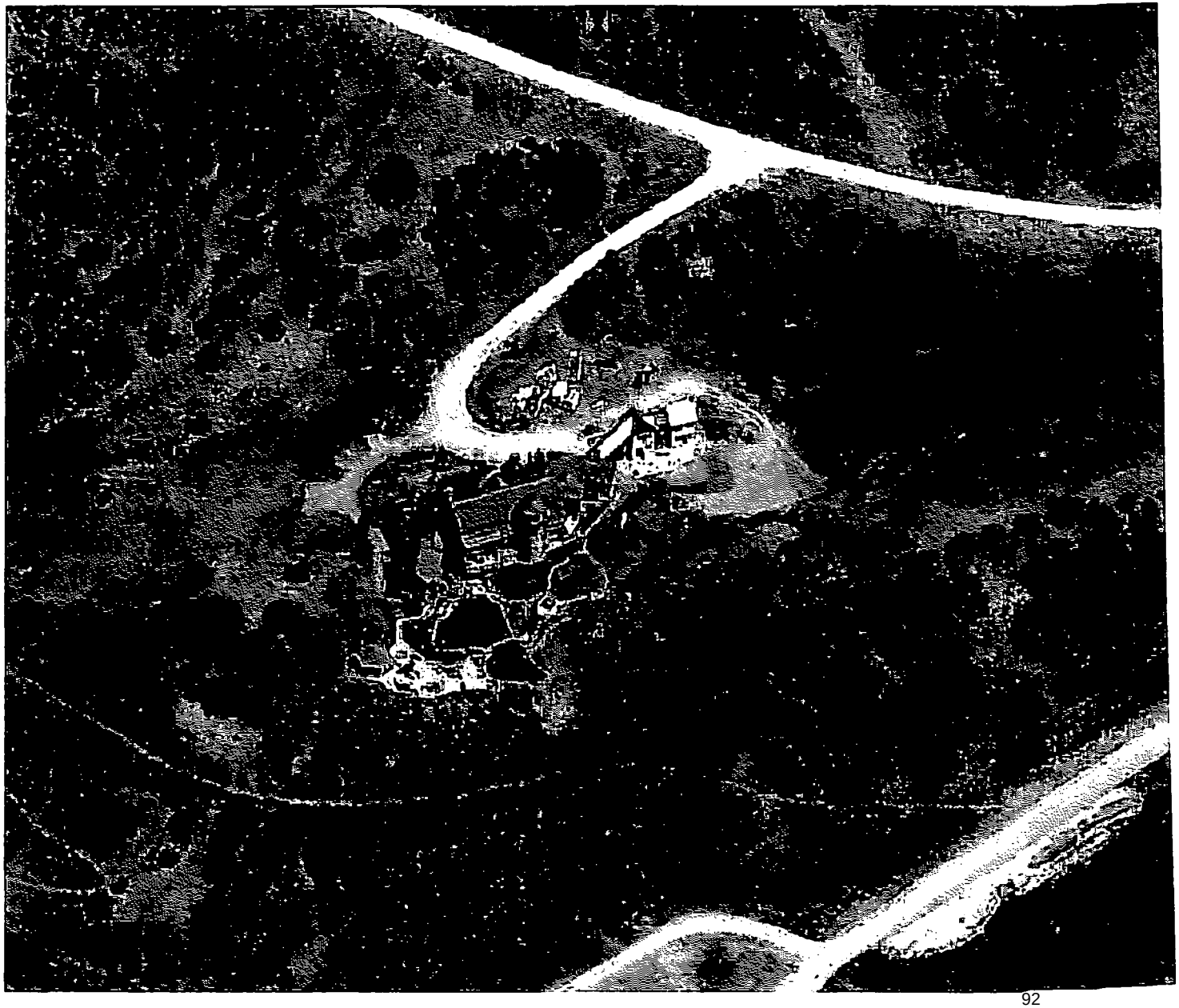
Example #10: Primary residential use with incidental grazing. No duration on grazing required.

- Property is located in San Miguel County, Colorado. (Telluride)
- Parcel is **35.51** acres with a **9,497** square foot custom residence.
- Local sheep rancher runs sheep over this lot for **2 to 4** days per year.
- Market value of land:

  $1,725,000
- Agricultural land value:

  $ 6,972
- Tax savings due to minimal sheep grazing:

  $4,025 per year.

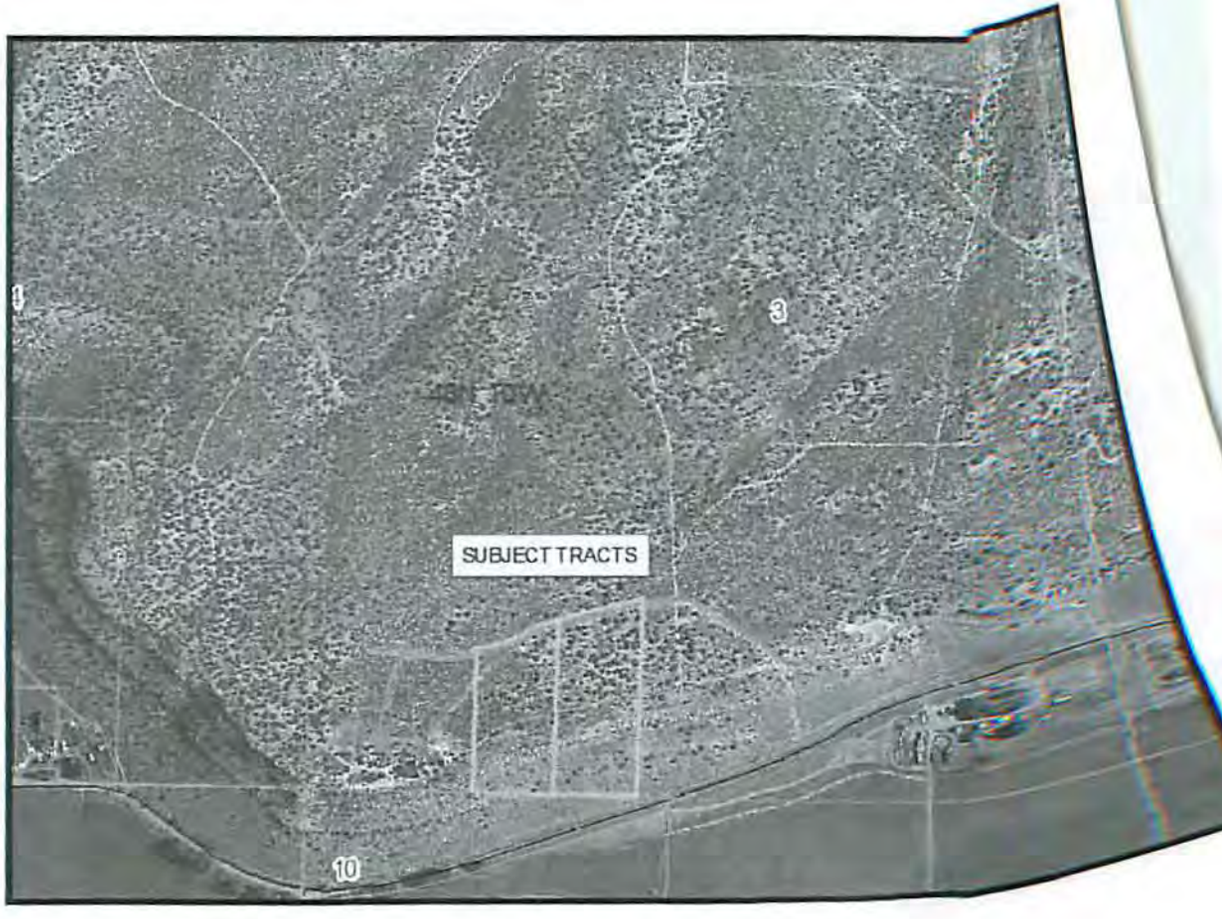


92

Example #11
Incidental Use: No Duration Requirements

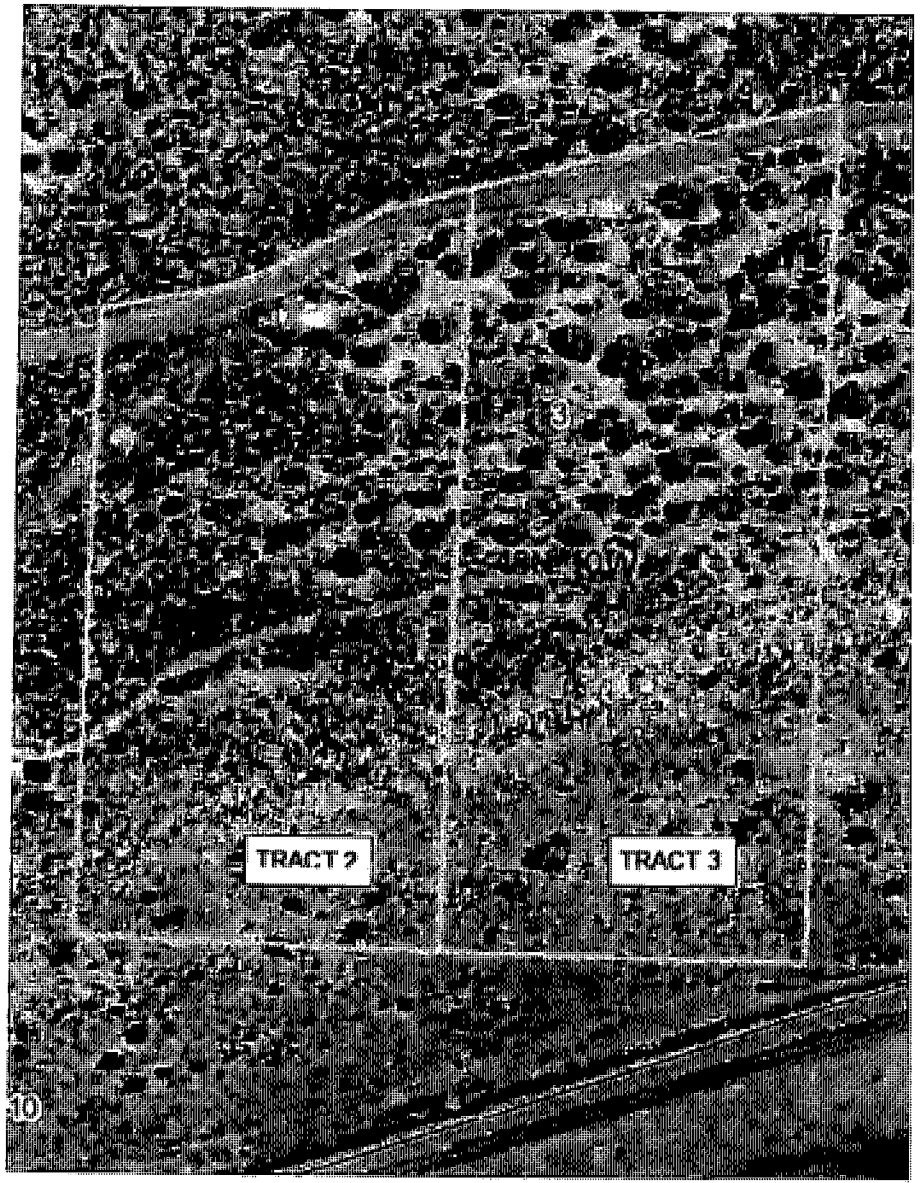
Facts:

- Properties are located in Montrose County, Colorado.
- Subject tracts are 3.981 and 4.692 acres of rocks and hillside, with a building envelope at the top of each escarpment lot.
- Grazing quality of land is 60 acres required to support 1 AUM.
- Comparable view lots have a market value of **$120,000.**
- Local rancher's sheep grazed over these subdivided lots for **ONE DAY** and were photographed for the appeals hearing.
- Owner received an agricultural classification by the BAA. In ruling, they indicated that a minimum **DURATION** of grazing was not defined in statues.
- Value and taxes as vacant land, respectively
  $120,000 and $1,999.29
- Value and taxes as agricultural land
  $70 and $1.16

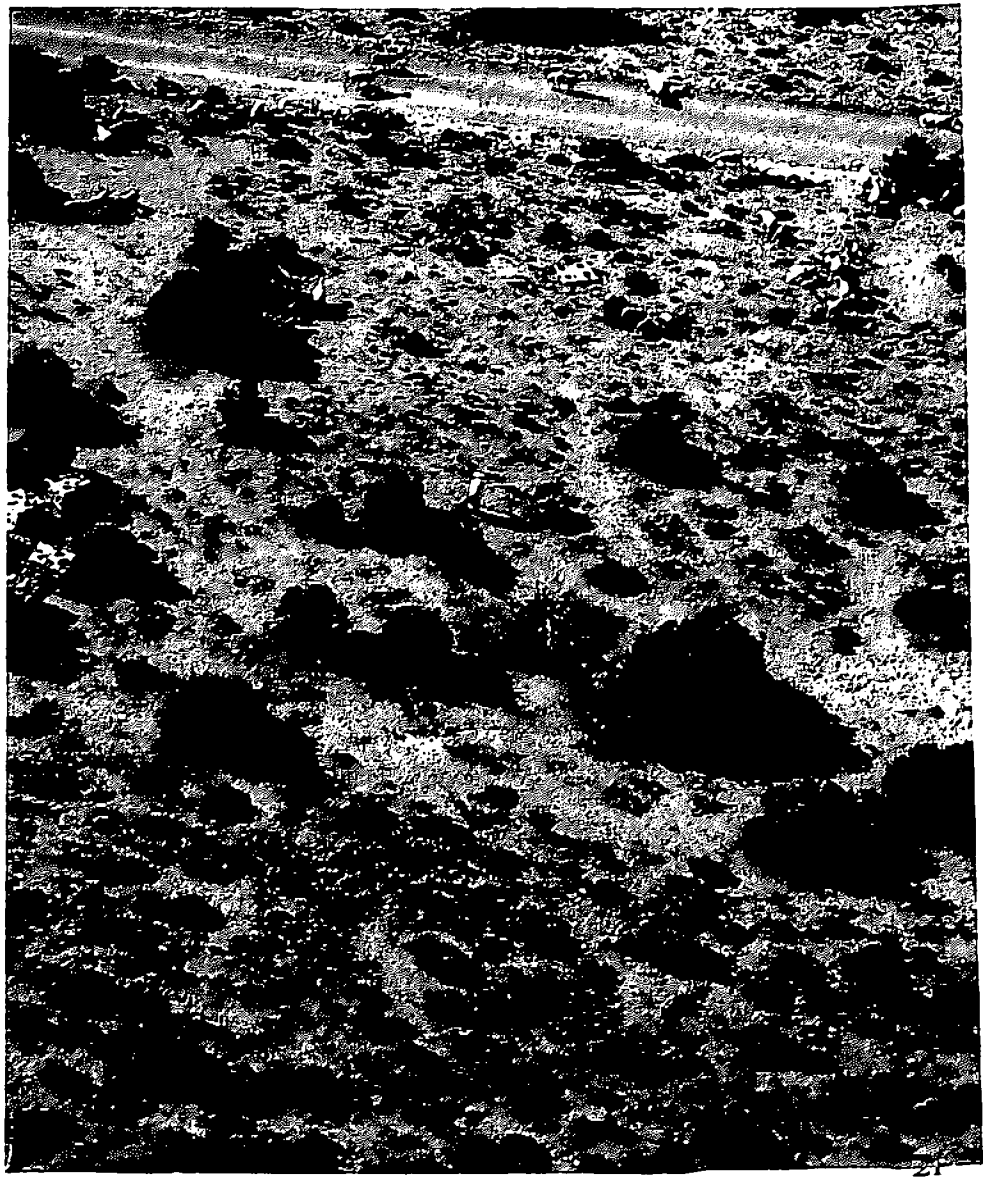


Example #1:
Incidental Use: No Duration Requirements

- Photo of subject property



- Photos of property taken by the owner, using a helicopter and presented at the Appeals hearing.

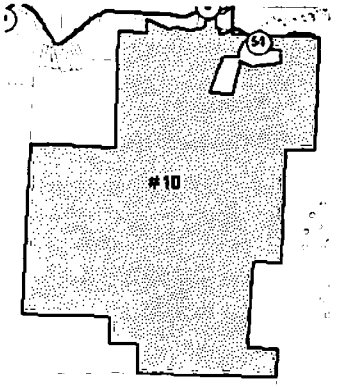


Example #11
Incidental Use: No Duration Requirements (Continued)

- Based on the poor soil classification of this land it would take **60 acres** of this type land to support **ONE** cow for one month.
- This is only **4.5 acres** and would not even support **ONE** cow per year.

	Total Acres in Parcel	Map Unit Symbol	Map Unit Name	Soil Name	Non-Irrigated Capability Class	Total Dry Weight Production (normal year pounds per acre)	Percent of parcel		Pounds of dry matter	@50% per DPT allowance for trampling and conservation	Forage divided by 1200 pounds = AUMs per Acre	Acres required per AU
TRACT 2	3.981	R3	Rock outcrop, Ustic Torriorthents, and Aridic Haplustepts soils, 25 to 200 percent slopes	Ustic torriorthents	8	300	29.5%	=	89			
		X31B	Lazear-Blancot-Rock outcrop complex, 3 to 25 percent slopes	Blancot	7	600	70.5%	=	423			
							Total	=	512	255.75	0.21	56
TRACT 3	4.692	R3	Rock outcrop, Ustic Torriorthents, and Aridic Haplustepts soils, 25 to 200 percent slopes	Ustic torriorthents	8	300	38.7%	=	116			
		X31B	Lazear-Blancot-Rock outcrop complex, 3 to 25 percent slopes	Blancot	7	600	61.3%	=	368			
							Total	=	484	241.95	0.20	60

A U M = Animal Unit Months
(The number of head of a certain unit size which can be grazed for one month)



Total Acreage :	4,093
Cost per acre:	$1100
Total Value:	$4,502,300

What Classified as Agriculture: Currently running 25 Pair

Comment from land owner to Rio Blanco County Assessor:
"I have read the law and there is a big loop hole. All I have to do for you to give me Ag is to have 1 Sheep on my 5000 acres for 1 day, and you will have to give me Ag. "

Year	Acres	Classification	Land Actual	Taxes from Land
2009	4093	AG	56,770	$1,389

What If....

Year	Acres	Classification	Land Actual	Taxes from Land
2009	4093	VACANT	4,502,300	$45,240

Conclusion

Because of the following:

- No minimum acreage requirement.
- No duration requirement for livestock grazing.
- No minimum income for the land.
- No minimum income from the operator of the land.
- No primary purpose criteria.
- No hobby farm classification.
- No mixed use residential/agricultural classification.
- No federal income tax filing requirements.

Assessors are having a difficult time applying the agricultural statutes equitably.

2077-19-1-00-024 Hay Production

VACANT LAND

Agricultural Classification

The subject property is a 4.33 acre vacant parcel located just outside the City of Littleton limits in Columbine Valley. This is a prestigious golfing community and country club. The parcel is currently classified as Agricultural as it is used for the production of grass hay that grows naturally. It sits behind a small commercial retail center and is bordered on two sides by residential homes. The homes on the south are known as The Village of Columbine Valley.
The owner custom hires out for the cutting and baling but does not fertilize, spray for weeds or do any maintenance with the field except let it grow on its own.

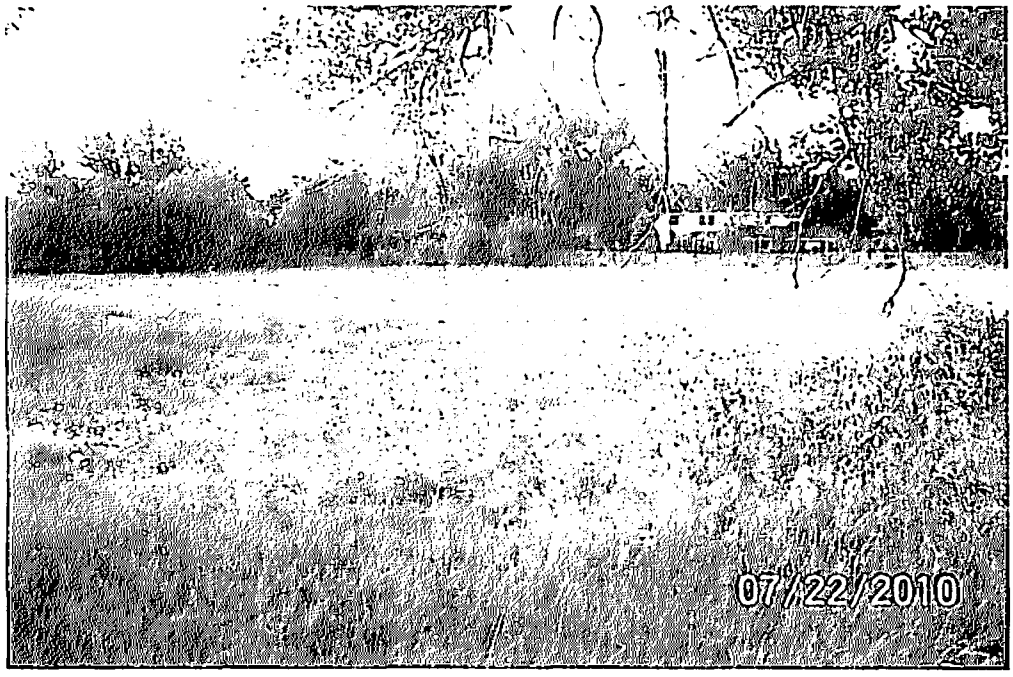
With this classification, the value of the property for 2009 was $242.00 with an assessed value of $70.00 for a tax bill of approximately $6.85

Had this property been classified as vacant land other than "AG" its market value would have been $565,844.00 with an assessed value of 164,094 for a tax bill of approximately $16.056.00.

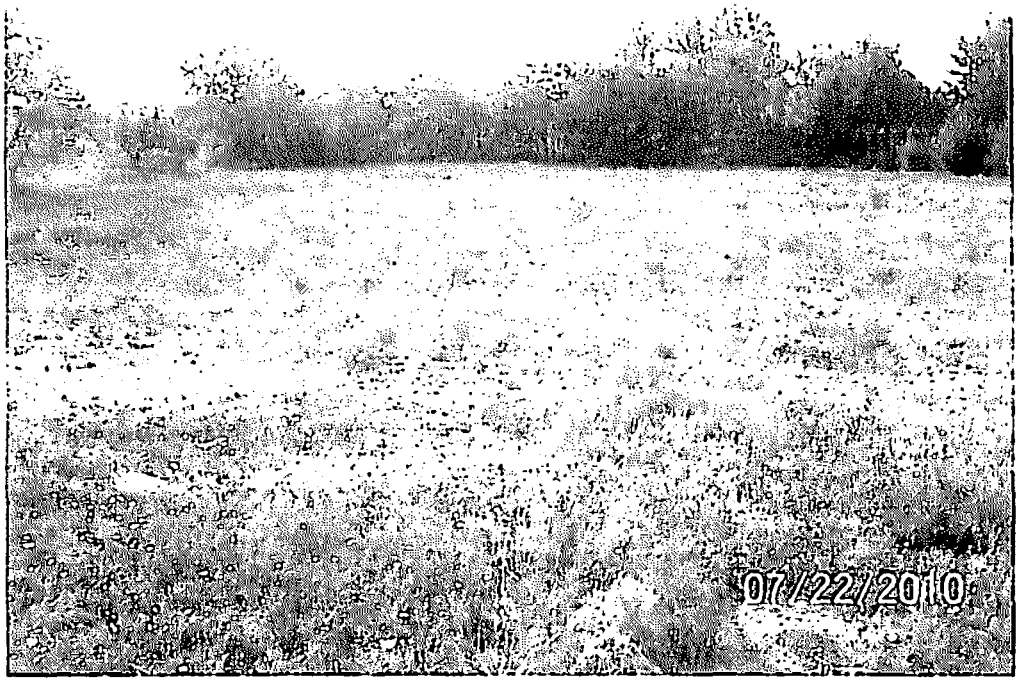
The loss of revenue from this parcel with the Ag classification results in $16,049.00.

	ACREAGE	ACTUAL VALUE	ASSESSED VALUE	TAX
AG LAND	4.33	$242.00	70	$6.85
MARKET LAND	4.33	$565,844.00	164,094	$16,056.00
DIFFERENCE		$565,602.00	164,024	$16,049.15

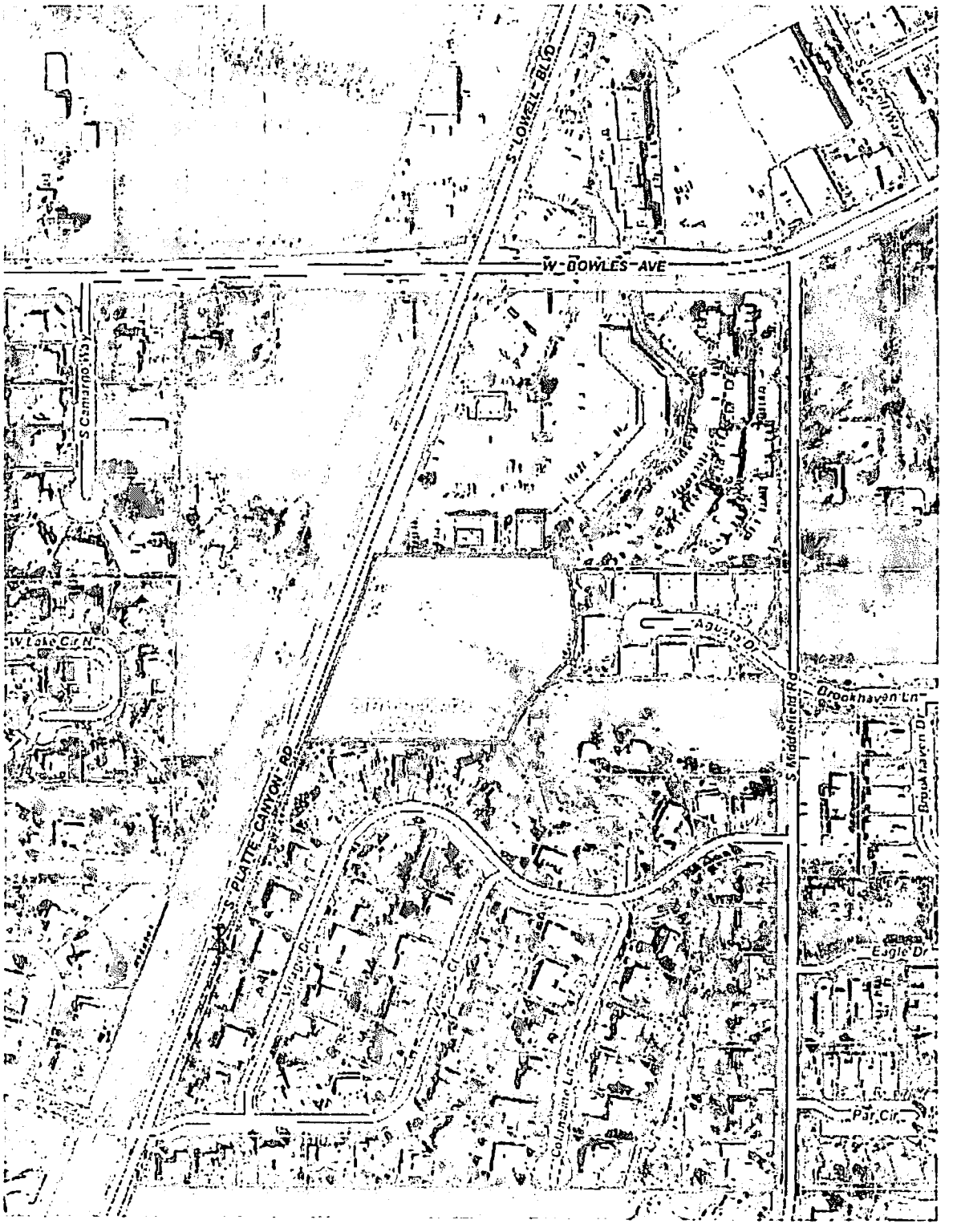
Commercial buildings on the north. 4.33 Acres



Residential homes on the east and south side of the property.



Weeds throughout the parcel that is uncut.


W Bowles Ave
S Lowell Blvd
S Platte Canyon Rd
S Middlefield Rd
S Camargo Ct
W Eolo Cir N
Brookhaven Ln
Brookhaven Dr
Eagle Dr
Par Cir

Greenwood Village
Llamas

2075-17-2-01-057 &. 058
2075-17-2-10-001
2075-17-2- 13-001

These four parcels are located in Greenwood Village just east of the intersection of S.Holly and E Belleview approximately two miles west of Interstate-25. This neighborhood is made up of primarily custom built homes.

The first parcels property owner claims to:

1) Rent Llamas out for packing trips
2) Use the males for stud purposes
3) Provide fiber for clothing or other items
4) Sell the animals for their abilities to purchasers

He has four to five animals. He believes these facts qualify him for agricultural classification. At the CBOE hearing it was determined that he failed to prove his "intent for a monetary profit."

The other threes parcels involved, are leased to him for (ten) $10.00/year for his animals. These property owners are classified as residential and are requesting the agricultural classification as well because the animals roam around on their land.

This neighborhood is a high end: desirable area with land values approximately $600,000.00/acre.

The following chart shows the difference between agriculture value verses the market value of these properties.

The tax revenue with the agricultural classification on the land would be approx.	$2.26
The revenue from market classification on the land would be approx.	$26,252.94
The resulting loss of revenue would be approximately	$26,250.00

Arapahoe County

Agricultural Classification Issues

Submitted to the

Agricultural Classification Task Force

GREENWOOD VILLAGE

2075-17-2-01-057 Myers- Vacant Land

	ACREAGE	ACTUAL VALUE	ASSESSED VALUE	TAX
AG LAND	2.38	$24.00	$6.96	$0.57
MARKET LAND	2.38	$642,600.00	$186,354.00	$15,307.36
DIFFERENCE		$642,576.00	$186,347.00	$15,306.79

Mill levy 0.082143

2075-17-2-01-058 Botts-Residential Land

	ACREAGE	ACTUAL VALUE	ASSESSED VALUE	TAX
AG LAND	2.38	$24.00	$6.96	$0.57
MARKET LAND	2.38	$428,400.00	$34,100.00	$2,801.00
DIFFERENCE		$428,376.00	$34,093.00	$2,800.43

2075-17-2-10-001 Botts-Residential Land

	ACREAGE	ACTUAL VALUE	ASSESSED VALUE	TAX
AG LAND	2.27	$23.00	$6.67	$0.55
MARKET LAND	2.27	$510,750.00	$40,656.00	$3,339.58
DIFFERENCE		$510,727.00	$40,649.33	$3,339.03

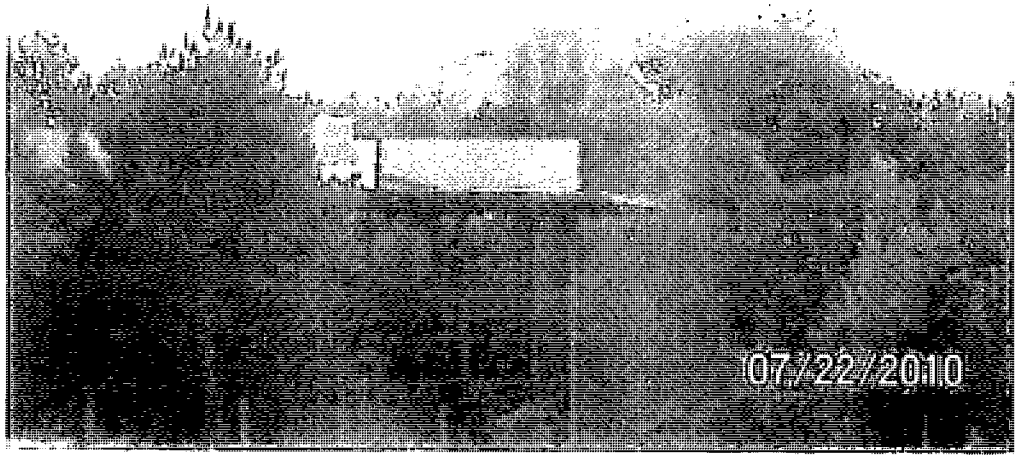
2075-17-2-13-001 Griffes-Residential land

	ACREAGE	ACTUAL VALUE	ASSESSED VALUE	TAX
AG LAND	2.45	$24.00	$6.96	$0.57
MARKET LAND	2.45	$735,000.00	$58,506.00	$4,805.00
DIFFERENCE		$734,976.00	$58,499.00	$4,804.43

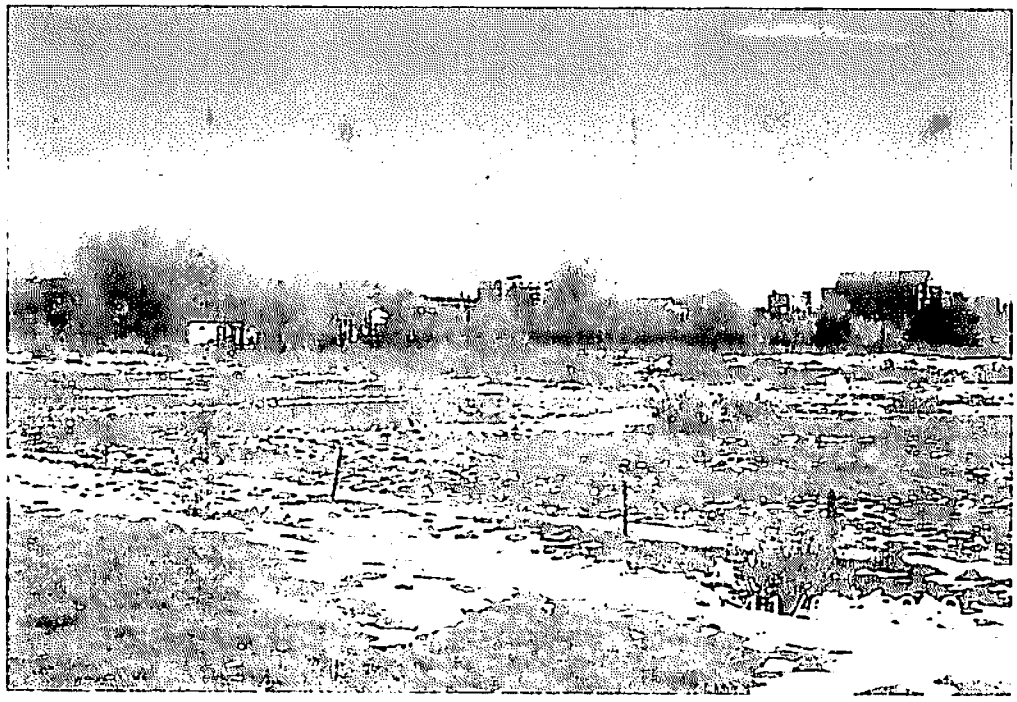
Total of 4 parcels with Ag Tax	$2.26
Total of 4 parcels with Market Tax	$26,252.94
Loss of Revenue	$26,250.00

Vacant land at 5900 E Belleview.

Part of the vacant land looking east. Notice the Office Buildings and the Landmark Condominiums in the background to the right. Sale prices on these condo's are a minimum of $500,000 to over $1,000,000 each.



Residence on 13-001 with an office building in the background.



Pasture area of 01-057 & 058 with office buildings from Denver Tech Center in the background.


S HOLLY ST
Piedmont Dr
Charrington Dr
E BELLEVIEW AVE
2075-17-2-10-001
2.27 Ac.
2075-17-2-01-057
2.38 Ac
2075-17-2-01-050
2.38 Ac
2075-17-2-13-001
2.45 Ac.
Red Fox Ln
E Orchard Ave
E Orchard Pl
E Crestline Ave
S Franklin St
S Gaylord St
E Crestline Ave

2077-13-2-01-029 Greenwood Village Hay Production

RESIDENTIAL LAND

The subject parcel is a residential property located in Greenwood Village with 10.46 acres. It sits at the corner of E Belleview Ave and S University at the southeast corner. This neighborhood is made up primarily of high end; desirable custom built homes with land values of approximately $600,000 an acre.

The owner claims that 3.49 of the 10.46 acres are used for the Residence. The remaining 6.97 acres are irrigated and is what he is now using for hay production. If all other criteria are met, he will be able to obtain his Ag classification in 2012.

(This owner also owns a parcel of land in Columbine Valley that has hay production.)

With the Agricultural classification, the value for grazing land would be $104.60 with an assessed value of $30.00 for a tax bill approximately $2.47.

Currently this property is classified as Residential and for the year 2009, the market value for the land was $3,624,000 with an assessed value of 288,470 with a tax bill resulting in approximately $23.811.00.

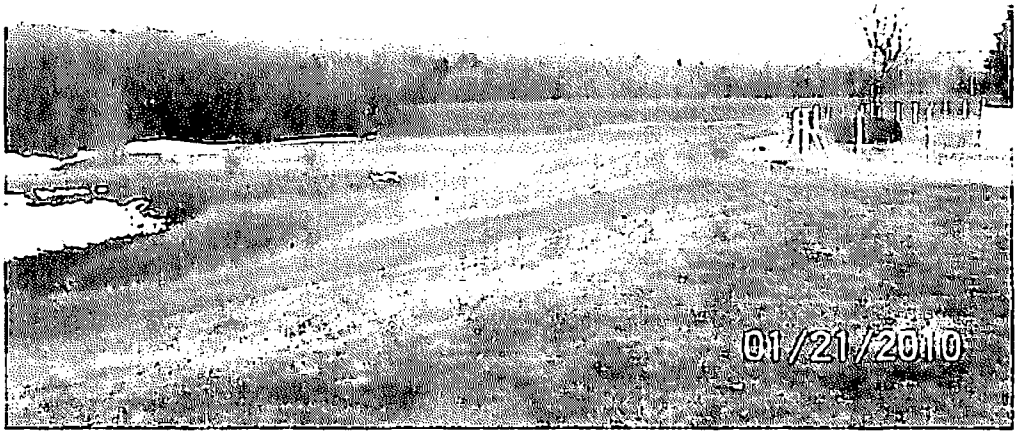
The loss of revenue from this parcel if the classification was Agricultural land would be $23,808.00

	ACREAGE	MARKET VALUE	ASSESSED VALUE	TAX
AG LAND	10.46	$104.60	30	$2.47
MARKET LAND	10.46	$3,624,000	288,470	$23,811.00
DIFFERENCE		$3,623,895.40	288,440	$23,808.00

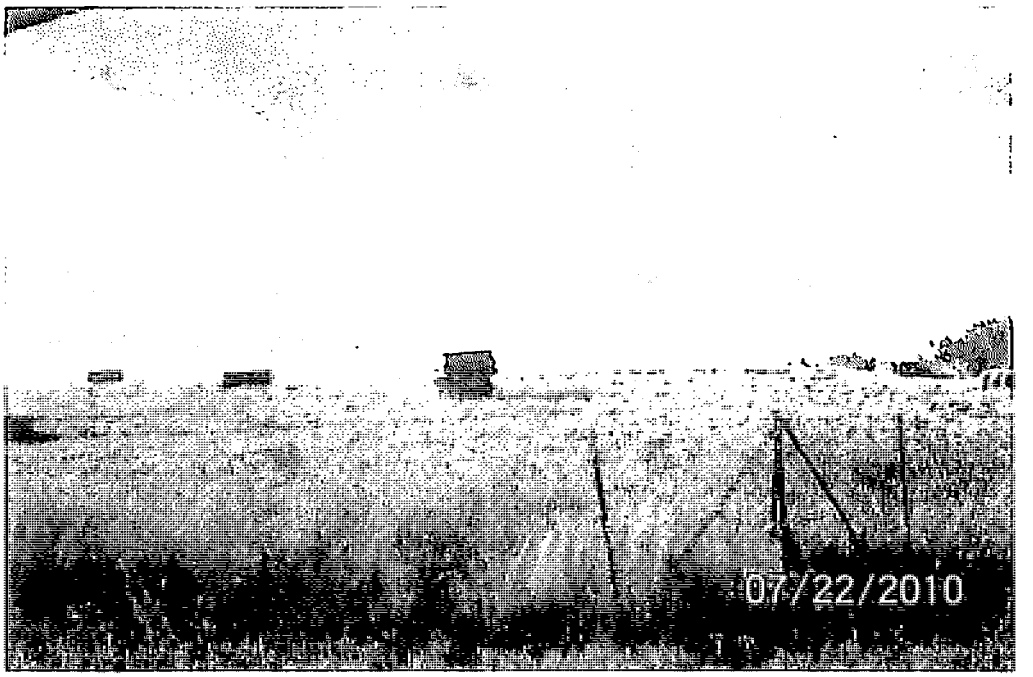
This property sits right behind the Greenwood Village sign at the corner of University and Belleview. The hay field is in the background behind the fence line beyond the trees.

House

Several ponds on the property with a burn built up in the background.



Hay used as a fence line.



Current cutting of hay


E Grand Ave
Cherry Hills Farm Dr
E BELLEVIEW AVE
S UNIVERSITY BLVD
University Ln
E Williamette Ln

Jordon Arapahoe
2073-30-2
-3
Cattle grazing

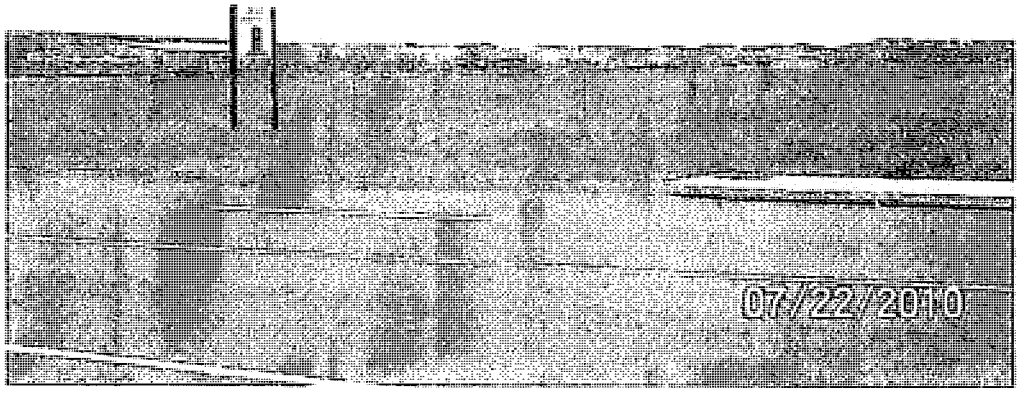
This area is located on the south side of Arapahoe Rd approximately one mile west of Parker Rd. It is in a commercial area referred to as the Centennial Airport Center with land values of approximately $261,360/acre or $6.00 sq ft.

Throughout this area are several parcels that rotate cattle back and forth during the year. The grazing is very minimal and they stay a short time or are supplemented with additional feed during their stay. Below is an example of four parcels.

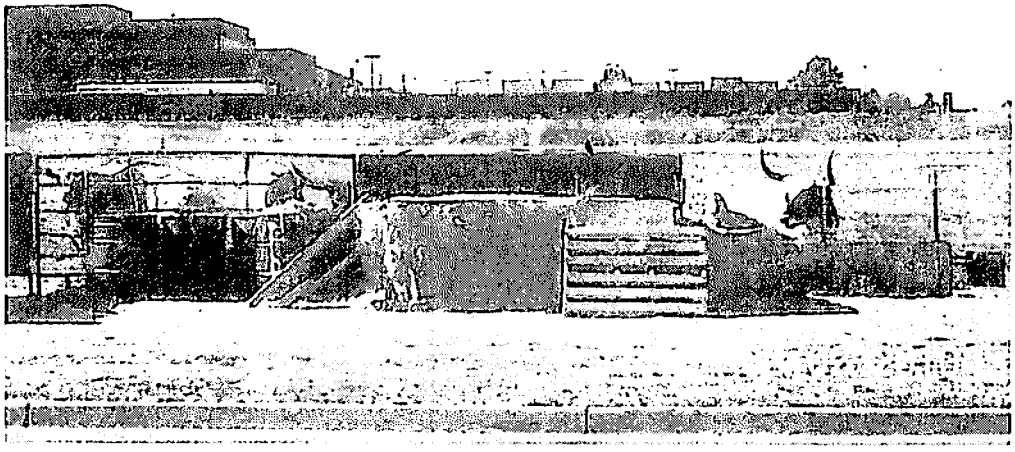
JORDAN ARAPAHOE

	ACREAGE	ACTUAL VALUE	ASSESSED VALUE	TAX
AG LAND	1.35	96.00	28.00	3.62
MARKET LAND	1.35	352,822.00	102,318.00	12,348.00
DIFFERENCE		352,726.00	102,290.00	12,344.38
AG LAND	2.23	159.00	50.00	6.23
MARKET LAND	2.23	582,832.00	169,021.00	20,398.00
DIFFERENCE		58,267.00	582,782.00	20,392.47
AG LAND	4.4	314.00	90.00	10.86
MARKET LAND	4.4	1,149,984.00	333,495.00	40,248.00
DIFFERENCE		1,149,670.00	33,405.00	40,237.14
AG LAND	6.72	480.00	$140.00	16.90
MARKET LAND	6.72	1,756,339.00	$509,338.00	61,470.51
DIFFERENCE		1,755,859.00		61,453.62

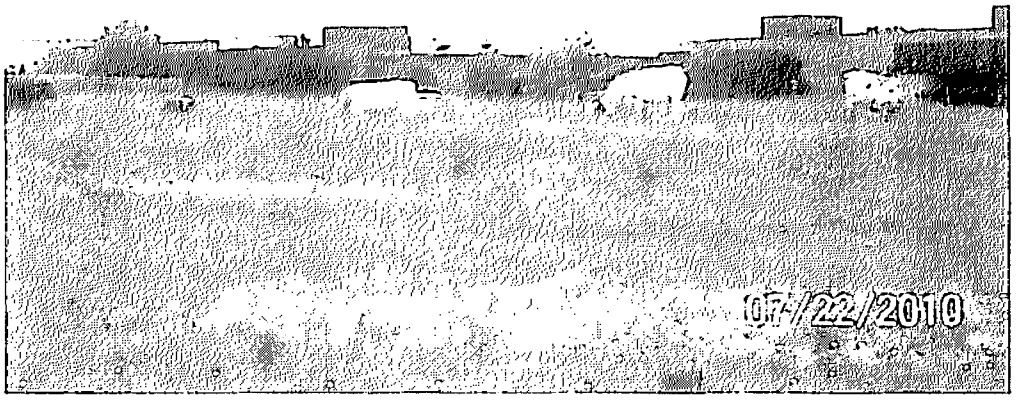
Total of 4 parcles tax with Ag	$37.61
Total of 4 parcles tax without Ag	$134,464.00
Loss of Revenue	$134,426.39



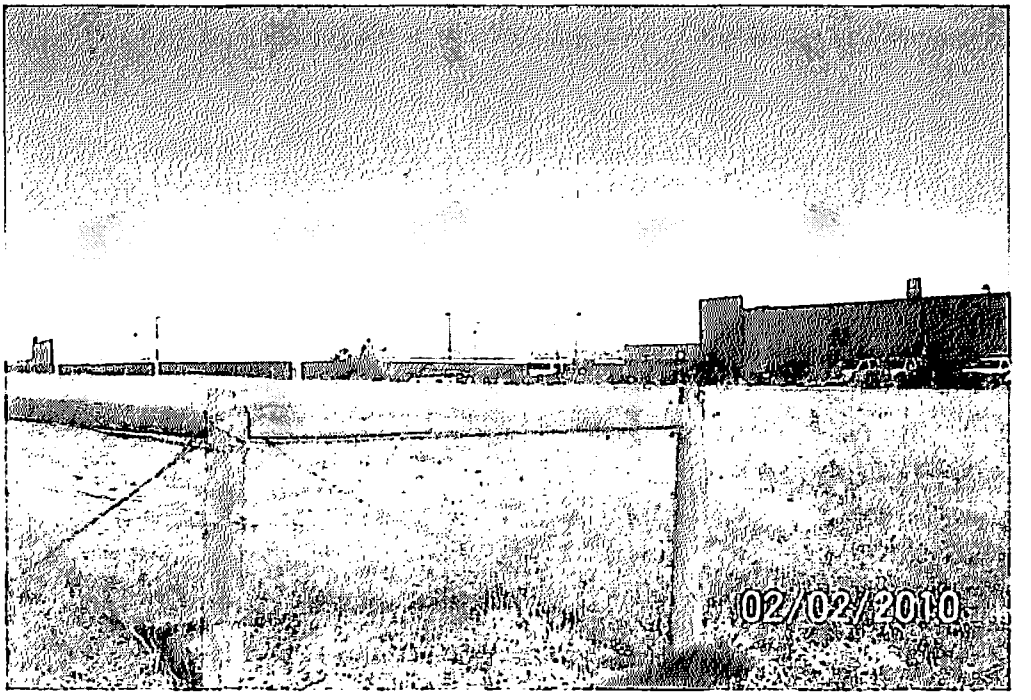
Corner of Briarwood Ave & Atchison St. Both east and west side of these parcels are Commercial buildings.



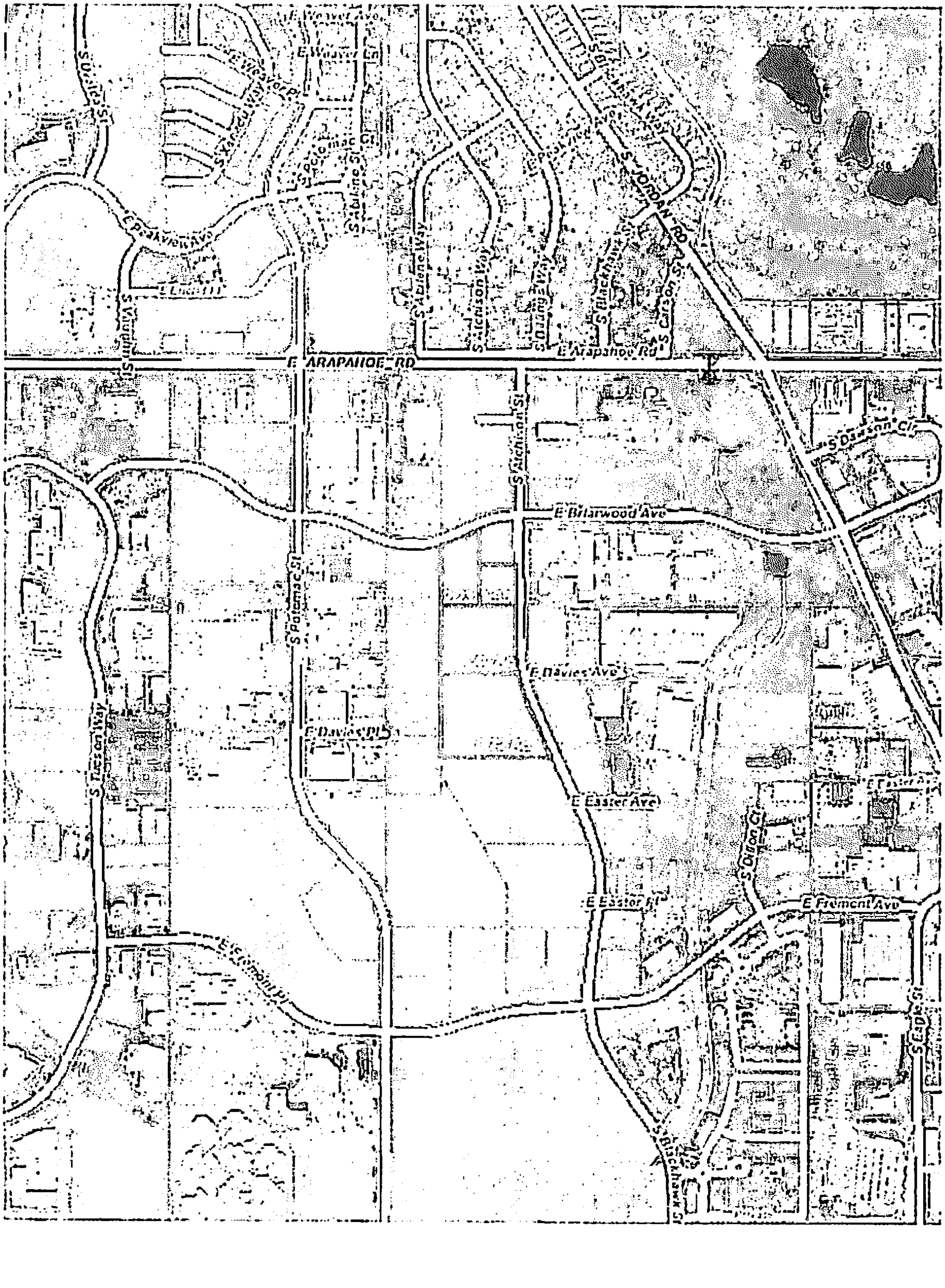
West of Atchison. Cattle and Commercial buildings.



Other buildings on west side of parcels.



Buildings East side of Atchison.



E ARAPAHOE RD
E Arapahoe Rd
E Briarwood Ave
S Potomac St
E Davies Ave
E Davies Pl
E Easter Ave
E Easter Pl
E Fremont Ave
E Fremont Pl
S Tucson Way
S Dillon Ct
S Dawson Ct
S Aitchison St
S Abilene Way
S Blackhawk St
E Peakview Ave
S Potomac Ct
S Sable Way
S JORDAN RD

2077-11-2-04-006.007 &011

Agricultural Classification within a Residential Development

A property owner within Cherry Hills Village owns three parcels that have Agricultural Classification. His Ag designation is based on Horse Showing under the Livestock definition of "animals that are used for food for human or animal consumption, breeding, draft, or **profit**."

The main house sits on 2.37 Acres with an Ag Land value of $1,716 and Market Land Value of $1,422,000. The barn which sits on its own parcel of 2.5 acres has an Ag Land value of $1,810 and Market Land Value of $1,500,000. The contiguous house and grazing land on 2.7 acres has an Ag Land value of $1,955 and a Market Land Value of $1,620,000.

	ACREAGE	AG LAND VALUE	MARKET LAND VALUE	VALUE DIFFERENCE
MAIN HOUSE	2.37	$1,716	$1,422,000	$1,498,190
BARN	2.5	$1,810	$1,500,000	$1,420,284
2nd HOUSE	2.7	$1,955	$1,620,000	$1,618,045
TOTAL	**7.57**	**$5,481**	**$4,542,000**	**$4,536,519**
ASSESSED		$1,589	361,543	359,954
TAXES		$150.00	$34,105.00	$33,955.00

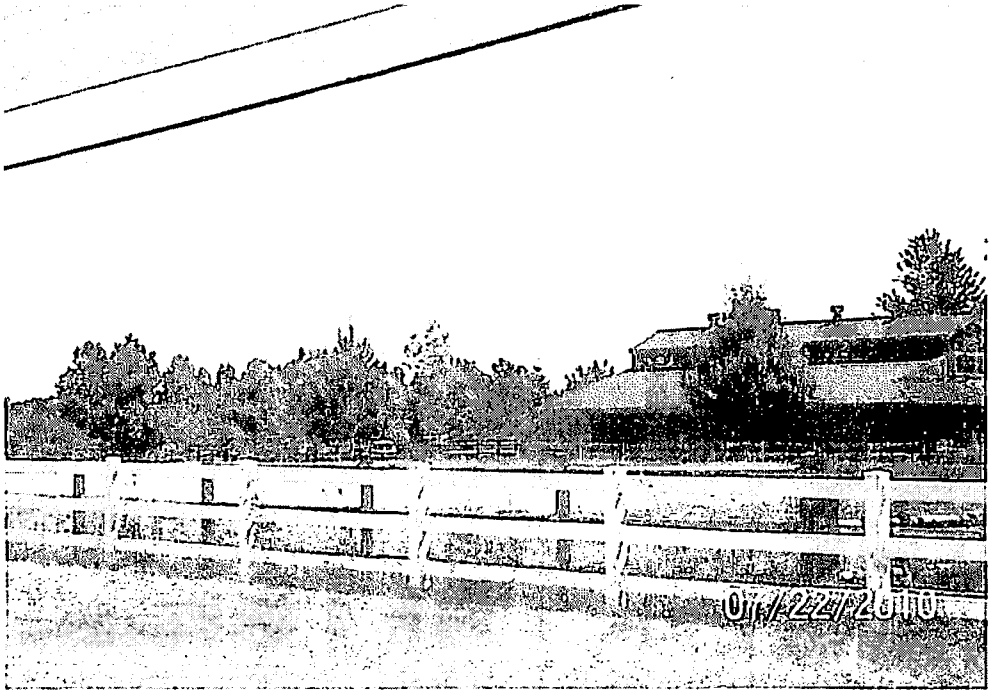
The total actual value for these three sites currently with an Agricultural Grazing Classification is $5,481.00 with an assessed value of $1,589. If these sites were classified as Residential, the market value would be $4,542,000.00 with an assessed value of $361,543. In applying the current Mill levy, the Ag land tax would be approximately $150.00 and the market land tax would be $34,105.00. The loss of revenue from these sites from the land classification is approximately $33,955.00.

There are several parcels in this subdivision that have similar acreages, some with horses and others without. Many of these property owners are trying to obtain the Agricultural Classification for value reductions as they realize the benefits. This particular neighborhood is basically a high end area with custom built homes with land values approximately $600,000 an acre.
2077-11-2-04-007.008 & 011

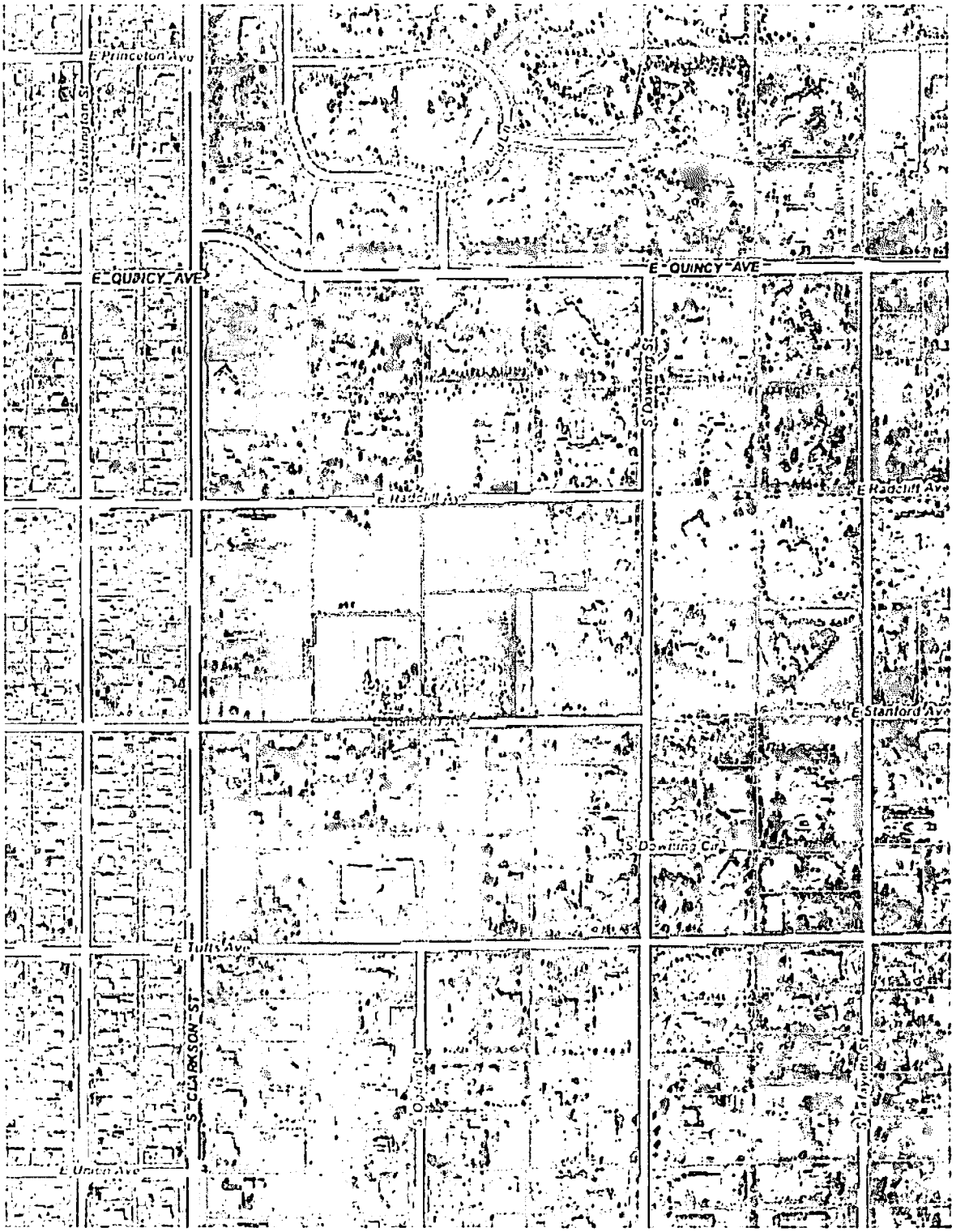
The house sits on the majority of the parcel. 2.37 Acres
This is the front of the house.

View of the back of the house is from the parcel behind that he uses for grazing and has a smaller house on. This parcel has 2.7 Acres

The barn entrance 2.5 Acres



Grass surrounds the working area in the sand west of the barn. (Beyond the white fence)


E Princeton Ave
E QUINCY AVE
E QUINCY AVE
S Dorchester Ct
E Radcliff Ave
E Stanford Ave
S Downing Cir
E Tufts Ave
S CLARKSON ST
S Ogden St
E Union Ave

Gini Pingenot

From: Andy Donlon [resource@frontier.net]
Sent: Thursday, July 29, 2010 11:02 AM
To: 'Gini Pingenot'
Subject: RE: HB 1293 Agricultural Classification Task Force Meeting - Thursday, July 29th from 12:30 to 4:30 at CCI

Hello Gini,

Please submit the following for the record.
Thank you

Andrew (Andy) Donlon

AGRICULTURAL CLASSIFICATION TASK FORCE
Thursday, July 29, 2010

Clearly there are varied and legitimate concerns of ambiguity regarding the State's Agricultural Classification. While there are some common concerns among the Task Force members, there are conflicting perspectives and interpretations of the relevant Statutes and Definitions. There is no doubt that there are "abuses" that should be specifically addressed by the Task Force.

Ultimately, County Assessors are tasked with addressing and correcting perceived abuses and rely heavily on the guidance and opinions of DOLA's Division of Property Taxation, relevant appellant court cases, and a series of reference materials prepared by the Division after review by the Advisory Committee to the Property Tax Administrator and approval by the State Board of Equalization. I believe it is important for the Task Force members to be provided with copies of these materials; specifically the 541 page "Land Valuation Manual" (ARL Vol. 3) and the 903 page "Administrative and Assessment Procedures Manual" (ARL Vol. 2).

Not to belabor the "pleasure horse" debate, however I believe it is one (1) of the several issues that illustrate the lack of uniformity expressed by Mr. Hughes and Mr. Hood. It was my experience that opinions varied among the six (6) Assessors I spoke to in an attempt to seek clarity on the subject. All made reference to the Palmer Case and several referred to portions of the ARL Vol. 3. Several indicated that the terms "farm" and "ranch" were mutually exclusive. In other words, an Ag producer could not be both a farmer AND a rancher according to the statutory definitions.

Closer scrutiny of the Statutes, the Palmer case, and the ARL volumes expose clear contradictions, ambiguity and resultant misguided interpretations by County Assessors.

I respectfully encourage the Task Force members to review the aforementioned references. I would also be happy to illustrate some of the apparent contradictions that I encountered throughout my protest and appeal process.

Finally, I vehemently disagree with those who advocate doing nothing and dismiss legitimate concerns by sidestepping debate with simple statements such as "the law is clear" AND "You have the right to utilize the appeal process". The law is NOT clear and as a result it further taints the protest and appeal process.

Respectfully,

Andrew (Andy) Donlon

Appendix 4

August 18th Meeting Materials

Agricultural Classification Task Force

Agenda for 3rd Meeting

Date: Wednesday, August 18th, 2010
12:30 – 4:30
Colorado Counties, Inc

❖ Introductions	12:30 – 12:40
❖ Approval of July 29th Meeting Minutes	12:40 – 12:45
❖ Review of Progress to date	12:45 – 1:00
❖ Brief Presentation from Division of Property Taxation (DPT) Changes to current law that could clarify some "simple" Ag issues	1:00 – 1:20
❖ Task Force Member Discussion on presentation	1:20 – 1:40
❖ Public Comment/Questions regarding DPT presentation	1:40 – 1:50
❖ BREAK	1:50 – 2:00
❖ Task Force Member Brainstorming session on agreed topics o **Ag/Residential classification** o **Primary purpose/ use criteria (mixed use)** o **Duration requirement for grazing**	2:00 – 3:50
❖ Public Comment	3:50 – 4:20
❖ Next Steps o Agenda Items for Next Meeting ▪ Defining the unintended consequences • Presentation(s) from Ag Community? ▪ Other	4:20 – 4:30

If you wish to join by conference call, here's the information you'll need to do so:
Conference Dial-in: 1.888.809.4012
Passcode: 8614076

Housekeeping Reminders:

1.) Please turn your microphone on when you wish to speak and identify who you are for those on the phone
2.) All handouts from this meeting and the last meeting are on CCI's website (www.ccionline.org). Click on 'Announcements' and scroll to the bottom of the page
3.) Next Meetings:
    a. Wednesday, September 8th 12:30 – 4:30 p.m. at CCI

HB 1293 Agricultural Classification Task Force

August 18, 2010

Meeting Minutes

Attendees

Task Force Members: Brad Hughes, Ken Hood, JoAnn Groff, Alan Foutz, Tim Canterbury, Kent Peppler, Hap Channell, Gene Pielan, Frank Weddig (phone)

Others: Kyle Hooper (Division of Property Taxation), Shawn Snowden (Division of Property Taxation), Karen Miller (Colorado Assessors Association), Troy Bredenkamp (Colorado Farm Bureau), Nick McGrath (Issacson Rosenbaum), Greg Yankee (Colorado Coalition of Land Trusts), Brock Herzberg (Colorado Dairy Producers), Landon Gates (Colorado Dairy Producers), John Ely (Pitkin County Attorney), Deborah Early (Icenogle Seaver Pogue), Becky Brooks (Colorado Corn Growers), Bill Clayton (CCI), Gini Pingenot (CCI), Beka Gill (Colorado Cattleman's Association), Steve Sneddon (Arapahoe County Assessor), Ken Parsons (Rio Blanco County Commissioner), Diana Archuleta Summers (Ranchers Archuleta County)

On Phone: Andy Donlon, Senator Bruce Whitehead

Review of July 29th meeting minutes

July 29th Meeting Minutes were unanimously approved.

Pleasure Horses Discussion

Mr. Andy Donlon, an attendee by phone, submitted for the record his concerns regarding pleasure horses and land they graze. He also spoke of his concerns and asked the task force to consider addressing them during the task force's proceedings. To summarize, Mr. Donlon sees a contradiction in the definitions of 'Farm', 'Ranch', and 'Agricultural and livestock products' as they apply to pleasure horses. If a pleasure horse consumes hay that has been cut and bailed from a property, that property is classified and valued as agricultural. However, if the pleasure horse grazes hay on that same property, the property does not qualify for an agricultural classification. On a three to four vote, the task force chose not to deliberate on Mr. Donlon's issue. (Voting not to consider Mr. Donlon's issue – Foutz, Canterbury, Pielan and Peppler. Voting to consider Mr. Donlon's issue – Hughes, Hood and Channell. Weddig was absent during this conversation and Groff chose to abstain from the vote.)

Division of Property Taxation's (DPT) Suggested Statutory Amendments

In response to a request by some task force members, Kyle Hooper, DPT, suggested two amendments that could be made to the statutory definition of 'Agricultural Land' that

would help provide clarity for the Division and County Assessors. His suggested amendments are below:

1) Add language that the use of the land for agricultural purposes is legally permitted; and
2) Add the word "calendar" for the two year measurement of use before Agricultural status can be established.

Mr. Hooper explained the reasoning for both clarifications. The 'legally permitted use' language is intended to address those circumstances when a homeowner living in an HOA allows for grazing to occur on his/her property and yet grazing is not allowed under the terms of the HOA. The 'calendar' language is intended to address those circumstances when a land owner claims that the use of his/her property as a farm or ranch on December 31st of one year followed by 365 days of the next year constitutes 'two years' of use, a criteria for receiving agricultural classification. Members of the task force expressed concerns about the word 'permitted' explaining that this might be misconstrued that farmers would have to seek a permit. They also voiced concern about the descriptive term 'calendar' saying that that conjures up a January 1st to December 31st timeframe that growing seasons don't adhere to. Ultimately, the task force decided not to pursue these suggestions as part of their recommendations.

Brainstorming session on agreed topics

From the last meeting, the task force agreed to limit their focus on three areas: 1.) Agricultural/Residential Classification or a Mixed Use Classification; 2.) Primary Purpose; and 3.) Duration Requirement for Grazing. After some discussion, the task force agreed to drop items #2 and #3 and just focus on item #1.

The task force agreed to explore the idea of valuing a portion of farm or ranch land that is not integral to the operation of the farm or ranch as residential. The portion of the land that would be considered for residential classification would be whatever the county's minimum building lot size is for the property. (The minimum building lot size ranges in acreage based on the percolation requirement associated with an onsite wastewater systems (septic tanks)).

The task force talked about exploring two variations of this idea in greater detail at their next meeting. The options below explain the two variations:

Option A: Integral to Agricultural Operation

Step 1: Determine the minimum building lot size for the property
Step 2: Using a litmus test (yet to be determined by the task force but may include questions like: Does the homeowner also operate the farm/ranch?) determine if the residence is integral to the agricultural operation of the land.
Step 3: If YES, then the minimum building lot size is valued and assessed as agricultural like the rest of the property. If NO, then the minimum building lot

size is valued and assessed as residential land and the rest of the property is valued and assessed as agricultural

OR

Step 3: If YES, then the minimum building lot size is valued and assessed as agricultural like the rest of the property. If NO, then the minimum building lot size is valued and assessed as residential land and any portion of the property that is not integral may also be valued and assessed as residential (or a classified as something other than agricultural).

Option B: Irrespective of Agricultural Operation

Step 1: Determine the minimum building lot size for the property
Step 2: Value and assess the minimum building lot size of the property as residential.
Step 3: Value and assess the rest of the property as agricultural

There was a suggestion that the Division of Property Taxation model how the above options might impact the property tax bills of sample ranches and farms. Additionally, there was discussion about how any change from agricultural classification to residential classification would probably impact the residential assessment rate due to the Gallagher amendment. JoAnn commented that the DPT needs to be careful about using state resources to "staff" the task force, but that she felt modeling property tax implications and potential Gallagher impacts could reasonably be accomplished within the DPT's normal course of business. Modeling specific examples of property tax bills might be better accomplished through the county assessors. Brad Hughes thought that he could put together some specific examples with the help of other assessors.

Given the prep work needed for the next meeting, the task force agreed to cancel the September 8th meeting and reschedule it for September 23rd. The next meeting will take place at CCI on September 23rd from 12:30 – 4:30.

What other states do regarding these three topics for the Agricultural Classification

1. Ag/Residential classification –

Arizona:

- A one-acre home site out of each farm or ranch is classified and valued as residential.

Kansas:

- Kansas's law specifically excludes lands used primarily for recreational and residential purposes from being classified as agricultural, even though such properties may produce or maintain plants or animals.

Nebraska:

- Land occupied by buildings (homes, barns, etc.) is not allowed to be classified as agricultural. The farm home-site is one acre or less, contiguous to farm site and valued as residential.

New Mexico:

- All improvements, other than those specified in Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately for property taxation purposes and the value of these improvements shall be added to the value of the land determined under this section.

Oregon:

- One-acre home sites out of each agricultural parcel are valued by a formula that results in a value somewhere between agricultural and residential.

Utah:

- To be classified as agricultural, land must be at least five acres in size and have been devoted to agricultural activities for the last three years.

2. Primary purpose/use criteria (mixed use) –

Arizona:

- The total operation must consist of at least:
  20 acres - field crops
  10 acres - tree crops (pecans, walnuts, etc.)
  Enough land to support 40 animal units - grazing

Kansas:

- Split use valuation is very common and is determined on an individual basis. For example, the land occupied by the house and outbuildings is classified and valued as a rural home site with the remainder classified and valued as agricultural.

Oregon:

- Land not zoned as farm use must meet the following requirements:
  1) Land is currently used, and has been used the preceding two years, as Ag.
  2) In three of the five preceding non-flood, non-drought calendar years, the land has been operated as part of a unit producing gross income from agricultural uses of:
     - Less than 6.5 acres - at least $650 gross inc.
     - 6.5 - 30 acres at $100 per acre gross inc.
     - More than 30 acres - at least $3,000 gross inc.
  3) Landowner must file an application for preferential treatment and the burden of proof as to gross income is on him.
  4) Land not zoned as farm use is disqualified if land is no longer in agricultural use or if land is platted

Utah:

- An owner of a tract of less than five acres may apply for a waiver if he submits proof that 80% of his income comes from the sale of agricultural products.

Wyoming:

- If the land is not leased land, the owner has derived annual gross revenues of not less than five hundred dollars ($500) from the marketing of agricultural products. If the land is leased, the lessee has derived annual gross revenue of not less than one thousand dollars ($1,0000 from marketing of agricultural products.

3. Duration requirement for grazing –

Utah:

- The following production requirement is mandatory for agricultural classification:

  Cropland - must produce in excess of 50% of the average production for that crop in that area.

  Grazing - Owner must be running at least 1/2 of the average number of animal units the land is capable of sustaining.

Wyoming:

- The land has been used or employed, consistent with the land's size, location and capability to produce as defined by the Department's rules and the "Mapping and Agricultural Manual".

APPRAISAL 410

AGRICULTURAL LAND DESIGNATION

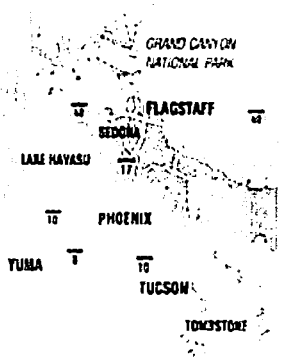
STUDENT HANDOUT

OTHER STATES

Other states with similar preferential Ag land valuation procedures for property tax purposes include *Arizona, Kansas, Oregon,* and *Utah.* Each of these states has more stringent criteria to qualify for agricultural classification than Colorado. The State of *Nebraska* values their agricultural land at 75% of market value using agricultural land sales.

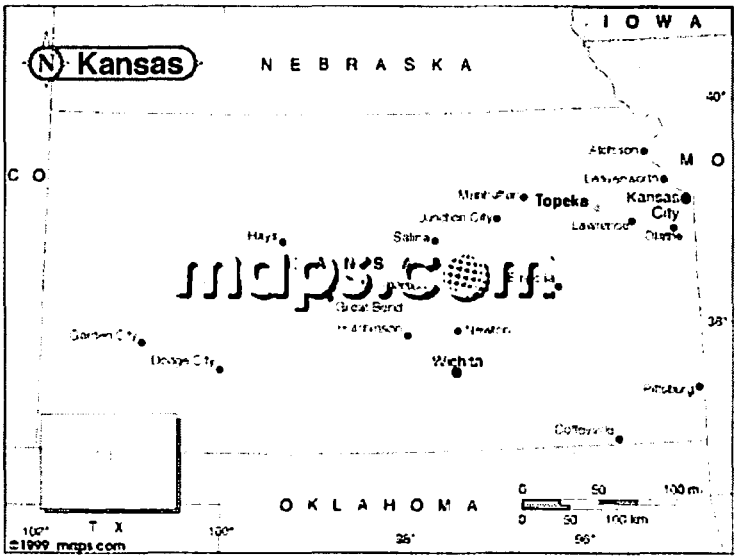
ARIZONA:

- The capitalization rate is set annually at a rate for all new Federal Land Bank loans for the five-year period prior to the year for which the valuation is being determined.
- A landowner must make formal application for the agricultural classification every five years and must certify that the land is still being used agriculturally every year.
- The total operation must consist of at least:
  20 acres - field crops
  10 acres - tree crops (pecans, walnuts, etc.)
  Enough land to support 40 animal units - grazing
- Land must have been operated continuously as a farm or ranch for seven of the last ten years and the owner must have some reasonable expectation of profit.
- A one-acre home site out of each farm or ranch is classified and valued as residential.
- There is no minimum acreage requirement for "high-density" Ag use (flowers, ornamental plants, rosebushes, Christmas trees, apiaries and livestock breeding.)



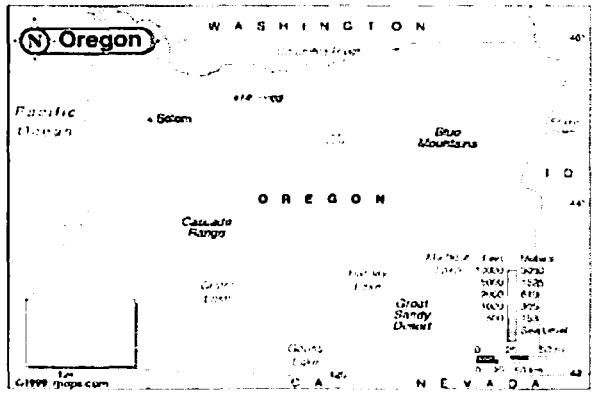
KANSAS:

- Agricultural land values are established at the state level every year.
- The Soil Conservation Service determines stocking rates and crop yields for every soil type in every count.
- The State then uses this information together with an 8 year average net income based on the landlord's share, capitalized at a statutory rate of 11.69%.
- County assessors have the authority to make adjustments to the value of individual properties, if circumstances warrant, including using a range of 12.95% - 15.55% as a capitalization rate.
- Classification of agricultural land is based on the primary use of the land.
- Kansas's law specifically excludes lands used primarily for recreational and residential purposes from being classified as agricultural, even though such properties may produce or maintain plants or animals.
- Split use valuation is very common and is determined on an individual basis. For example, the land occupied by the house and outbuildings is classified and valued as a rural home site with the remainder classified and valued as agricultural.



OREGON:

- Classification of agricultural land hinges on statewide zoning.
- The capitalization rate is determined annually and is based on the average rate of interest charged in Oregon by the Federal Land Bank on farm loans during the preceding five years, plus a component for the local tax rate.
- Agricultural use is defined as current use of the land for the primary purpose of obtaining a monetary profit by engaging in specified agricultural activities that include agribusiness.
- Land zoned as farm use does not have to meet any requirements to be classified and valued as agricultural.
- However, this land becomes disqualified for such treatment if the assessor discovers that it is no longer being used agriculturally or if the land is removed from a farm use zone.
- Upon disqualification, back taxes are due equal to the additional taxes that would have been collected the last year if the land had not been valued as agricultural times the number of years (up to ten) the land was valued as agricultural.
- One-acre home sites out of each agricultural parcel are valued by a formula that results in a value somewhere between agricultural and residential.
- Land not zoned as farm use must meet the following requirements:
  1) Land is currently used, and has been used the preceding two years, as Ag.
  2) In three of the five preceding non-flood, non-drought calendar years, the land has been operated as part of a unit producing gross income from agricultural uses of:
     - Less than 6.5 acres - at least $650 gross inc.
     - 6.5 - 30 acres at $100 per acre gross inc.
     - More than 30 acres - at least $3,000 gross inc.
  3) Landowner must file an application for preferential treatment and the burden of proof as to gross income is on him.
  4) Land not zoned as farm use is disqualified if land is no longer in agricultural use or if land is platted.

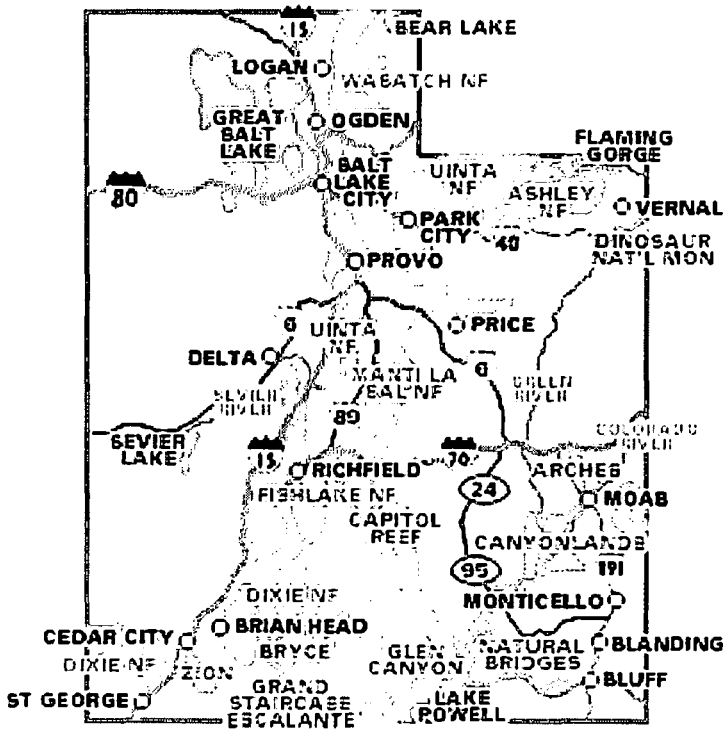


UTAH:

- Land that is part of a platted subdivision does not qualify for the agricultural classification.
- To be classified as agricultural, land must be at least five acres in size and have been devoted to agricultural activities for the last three years.
- An owner of a tract of less than five acres may apply for a waiver if he submits proof that 80% of his income comes from the sale of agricultural products.
- The following production requirement is mandatory for agricultural classification:

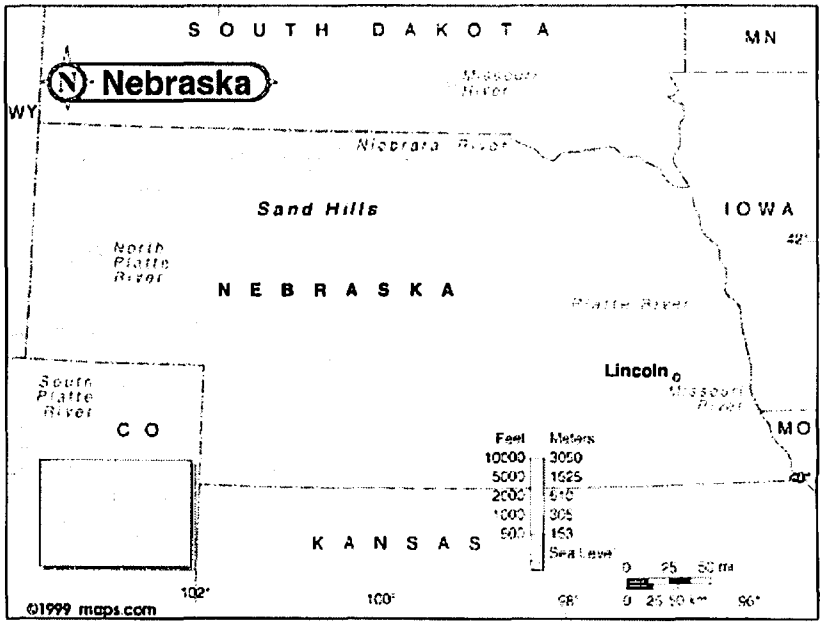
  Cropland - must produce in excess of 50% of the average production for that crop in that area.

  Grazing - Owner must be running at least 1/2 of the average number of animal units the land is capable of sustaining.



NEBRASKA:

- Agricultural land is valued at 75% of market value.
- Values are established at the state level under a statutory formula.
- Agricultural land sales are used to develop market value and the net income per acre for all agricultural land.
- Net income is divided by the market value to arrive at a market-derived capitalization rate.
- Land that has been subdivided for residential use is specifically excluded from being valued as agricultural.
- Land occupied by buildings (homes, barns, etc.) is not allowed to be classified as agricultural. The farm home-site is one acre or less, contiguous to farm site and valued as residential.



NEW MEXICO:

7-36-20. Special method of valuation; land used primarily for agricultural purposes

A. The value of land used primarily for agricultural purposes shall be determined on the basis of the land's capacity to produce agricultural products. Evidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made of eligibility for the land to be valued under this section creates a presumption that the land is used primarily for agricultural purposes during the tax year in which the determination is made. If the land was valued under this section in one or more of the three tax years preceding the year in which the determination is made and the use of the land has not changed since the most recent valuation under this section, a presumption is created that the land continues to be entitled to that valuation.

B. For the purpose of this section, "agricultural use" means the use of land for the production of plants, crops, trees, forest products, orchard crops, livestock, poultry, captive deer or elk, or fish. The term also includes the use of land that meets the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

C. The department shall adopt rules for determining whether land is used primarily for agricultural purposes. The rules shall provide that the use of land for the lawful taking of game shall not be considered in determining whether land is used primarily for agricultural purposes.

D. The department shall adopt rules for determining the value of land used primarily for agricultural purposes. The rules shall:

(1) specify procedures to use in determining the capacity of land to produce agricultural products and the derivation of value of the land based upon its production capacity;

(2) establish carrying capacity as the measurement of the production capacity of land used for grazing purposes, develop a system of determining carrying capacity through the use of an animal unit concept and establish carrying capacities for the land in the state classified as grazing land;

NEW MEXICO:

(3) provide that land the bona fide and primary use of which is the production of captive deer or elk shall be valued as grazing land, and that captive deer shall be valued and taxed as sheep and captive elk shall be valued and taxed as cattle;

(4) provide for the consideration of determinations of any other governmental agency concerning the capacity of the same or similar lands to produce agricultural products;

(5) assure that land determined under the rules to have the same or similar production capacity shall be valued uniformly throughout the state; and

(6) provide for the periodic review by the department of determined production capacities and capitalization rates used for determining annually the value of land used primarily for agricultural purposes.

E. All improvements, other than those specified in Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately for property taxation purposes and the value of these improvements shall be added to the value of the land determined under this section.

F. The owner of the land must make application to the county assessor in a tax year in which the valuation method of this section is first claimed to be applicable to the land or in a tax year immediately subsequent to a tax year in which the land was not valued under this section. Application shall be made under oath, shall be in a form and contain the information required by department rules and must be made no later than the last day of February of the tax year. Once land is valued under this section, application need not be made in subsequent tax years as long as there is no change in the use of the land.

G. The owner of land valued under this section shall report to the county assessor whenever the use of the land changes so that it is no longer being used primarily for agricultural purposes. This report shall be made on a form prescribed by department rules and shall be made by the last day of February of the tax year immediately following the year in which the change in the use of the land occurs.

NEW MEXICO:

H. Any person who is required to make a report under the provisions of Subsection G of this section and who fails to do so is personally liable for a civil penalty in an amount equal to the greater of twenty-five dollars ($25.00) or twenty-five percent of the difference between the property taxes ultimately determined to be due and the property taxes originally paid for the tax years for which the person failed to make the required report.

7-36-21. Special method of valuation; livestock.

A. All livestock located in the state on January 1 of the tax year shall be valued for property taxation purposes as of January 1.

WYOMING:

GENERAL INFORMATION

Many states have laws regarding the preferential assessment of agricultural land. This means that farm and ranch assessments are usually based on the lands capability to produce agricultural products. In Wyoming, agricultural land is taxed based on the land's productive capability under normal conditions.

AG LAND DEFINITIONS

Common questions arise in the classification of agricultural lands. Wyoming uses the following points as criteria:

1. As of the assessment date, the land is being used for an agricultural purpose, which includes: a.) cultivation of the soil for production of crops; or b.) production of timber products or grasses for forage; or c.) rearing, feeding, grazing or management of livestock.

2. The land is not part of a platted subdivision;

3. If the land is not leased land, the owner has derived annual gross revenues of not less than five hundred dollars ($500) from the marketing of agricultural products. If the land is leased, the lessee has derived annual gross revenue of not less than one thousand dollars ($1,0000 from marketing of agricultural products.

4. The land has been used or employed, consistent with the land's size, location and capability to produce as defined by the Department's rules and the "Mapping and Agricultural Manual".

Division of Property Taxation recommendations for statutory language clarification.

Current

(1.6) (a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(I) 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 subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. "Agricultural land" under this subparagraph (I) includes land underlying any residential improvement...

Amended

(1.6) (a) "Agricultural land", whether used by the owner of the land or a lessee, means one of the following:

(I) A parcel of land, whether located in an incorporated or unincorporated area and regardless of the uses for which such land is zoned, **AS LONG AS THE USE IS A LEGALLY PERMITTED USE**, that was used the previous two **CALENDAR** years and presently is used as a farm or ranch, as defined in subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. "Agricultural land" under this subparagraph (I) includes land underlying any residential improvement...

The language change for **use** clarifies that the use must be legal and not conflicting with covenants or land-use restrictions. This change ties into the MDC and Edith Clarke cases presented at the first meeting.

The **calendar** language change clarifies that two entire previous years and the current year must be shown for use to establish agricultural classification. This prevents abuse from parties who attempt to circumvent the establishment of legitimate agricultural use. This case, Aberdeen, is currently being petitioned for certiorari to the Supreme Court.

Gini Pingenot

From: Andy Donlon [resource@frontier.net]
Sent: Wednesday, August 18, 2010 10:29 AM
To: 'Gini Pingenot'; afoutz@colofb.com; apogue@insbcolorado.com; bkirkmeyer@co.weld.co.us; Bbr1463@aol.com; claytonwjc@aol.com; bsilberstein@ir-law.com; assessor@montrosecounty.net; brockherzberg@gmail.com; Bruce.whitehead.senate@state.co.us; csakdol@co.arapahoe.co.us; DWissel@parkco.us; dearly@insbcolorado.com; dickray@centurytel.net; ellen.roberts.house@state.co.us; fweddig@co.arapahoe.co.us; genep@gulleygreenhouse.com; greg.yankee@cclt.org; HChannell@gunnisoncounty.org; JSilvestro@irelandstapleton.com; Jenifer.Gurr@ag.state.co.us; JoAnn.Groff@state.co.us; jtaylor@ccionline.org; john.ely@co.pitkin.co.us; john.stulp@ag.state.co.us; john.swartout@cclt.org; kturner@co.rio-blanco.co.us; Karenallenmiller@gmail.com; HotterKC@co.laplata.co.us; oteroassessor@oterogov.org; kent.peppler@rmfu.org; Kyle.hooper@state.co.us; landon.gates@gmail.com; sbailey@co.morgan.co.us; leland.swenson@rmfu.org; lallison@bandedpeakranch.com; mlarson@irelandstapleton.com; mgarrington@gmail.com; 'Nick McGrath'; rchacey@centurytel.net; Shawn.Snowden@state.co.us; stephanie@cecenviro.org; ssneddon@co.arapahoe.co.us; terry@coloradocattle.org; timccanterbury@gmail.com; tom.massey.house@state.co.us; tbredenkamp@colofb.com
Subject: RE: HB 1293 Agricultural Classification Task Force Meeting - Wednesday, August 18th from 12:30 to 4:30 at CCI

The Task Force agenda for meeting #2 listed "pleasure horses" as a discussion item, yet there was no discussion at all. Perhaps Mr. Hooper could elaborate on the subject and "clear up" the obvious ambiguity and seeming contradictions in language.

Consider the statutory definitions of farm and ranch again. The contradiction is obvious:

39-1-102 (3.5) 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.**

39-1-102 (13.5), C.R.S. "**Ranch**" means a parcel of land which is used for grazing livestock for the primary purpose of obtaining a monetary profit. For the purposes of this subsection (13.5), "livestock" means domestic animals which are used for food for human or animal consumption, breeding, draft, or profit.

39-1-102 (1.1) "Agricultural and livestock products" means plant or animal products in a raw or unprocessed state that are derived from the science and art of agriculture, **regardless of the use of the product after its sale and regardless of the entity that purchases the product.** "Agriculture", for the purposes of this subsection (1.1), means farming, ranching, animal husbandry, and horticulture.

We are told that the terms "Farm" and "Ranch" are mutually exclusive. In other words, an Ag Producer can qualify as a Farm or a Ranch, but not both. Therefore, if pleasure horses consume "farmed" hay on the property, the property would qualify as Ag. But if the pleasure horses graze that same hay, the property would not qualify. In both cases, the land owner / ag producer's intent to make a profit is identical.

The Division seeks to clarify some of the ambiguity in the Statutes that have lead to interesting interpretations by the courts, yet the Division does not view the singular 1998 Palmer Appeals case (the "pleasure horse" decision) as one of those "interesting interpretations".

The contradiction makes sense only if you want it to make sense and possess the authority to interpret it as sensible. But for the "average", reasonable person, the contradiction is absurd. I hope the Task Force will examine the subject a bit further.

Sincerely,

Andy Donlon

Appendix 5

September 23rd Meeting Materials

Agricultural Classification Task Force

Agenda for 4th Meeting

Date: Thursday, September 23rd, 2010
12:30 – 4:30
6th floor of the Colorado Counties, Inc Building

❖ Introductions	12:30 – 12:40
❖ Approval of August 18th Meeting Minutes	12:40 – 12:45
❖ Review of Progress to date	12:45 – 1:00
❖ Presentation on Potential Gallagher Impact and property tax implications - Greg Schroeder, Division of Property Taxation	1:00 – 1:30
❖ Presentation on Potential property tax implications for specific counties - Brad Hughes, Montrose County Assessor and Task Force Member	1:30 – 1:45
❖ BREAK	1:45 – 2:00
❖ Presentation of draft legislation *FOR PURPOSE OF DISCUSSION* -CCI Staff	2:00 – 2:30
❖ Task Force Member Discussion	2:30 – 3:30
❖ Public Comment	3:30 – 4:00
❖ Next Steps	4:00 – 4:30

If you wish to join by conference call, here's the information you'll need to do so:
Conference Dial-in: 1-218-862-1300
Passcode: 171009

Housekeeping Reminders:

1.) Please turn your microphone on when you wish to speak and identify who you are for those on the phone
2.) All handouts from this meeting and the last meetings are on CCI's website (www.ccionline.org). Click on 'Announcements' and scroll to the bottom of the page
3.) Next Meetings:
    a. No more meetings have been scheduled to date

HB 1293 Agricultural Classification Task Force

September 23, 2010

Meeting Minutes

Attendees

Task Force Members: Brad Hughes, Ken Hood, JoAnn Groff, Alan Foutz, Tim Canterbury, Kent Peppler, Hap Channell, Frank Weddig, and Gene Pielan (phone)

Others: Kyle Hooper (Division of Property Taxation), Shawn Snowden (Division of Property Taxation), Karen Miller (Colorado Assessors Association), Brock Herzberg (Colorado Dairy Producers), Landon Gates (Colorado Dairy Producers), Deborah Early (Icenogle Seaver Pogue), Bill Clayton (CCI), Gini Pingenot (CCI), Dave Wissel (Park County Assessor), Crystal Korrey (Colorado Farm Bureau), Terry Fankhauser (Colorado Cattleman), Rep. Tom Massey (HD 60) , Stephanie Thomas (Colorado Environmental Coalition), Danny Williams (Colorado Cattleman)

On Phone: Andy Donlon, Susan Hakanson

Review of August 18th Meeting Minutes

August 18th Meeting Minutes were unanimously approved.

Presentation on Potential Gallagher Impact and Property Tax Implications

In response to a request by task force members, the Division of Property Taxation analyzed what – if any – impact there might be to the residential assessment rate if the land under farm and ranch residences were added to the 'residential' side of the Gallagher equation. Greg Schroeder, DPT, explained his analysis to the task force. In summary, he explained that the residential assessment rate – which is currently set at 7.96% - should have actually been 9.20% for 2009 and 2010. However, TABOR requires that any increases in taxes must be approved by voters. Given the hurdles – political, monetary, public's appetite for increased taxes, etc - involved in requesting voters to increase the residential assessment rate, the current rate has held steady since 2003. Mr. Schroeder then explained that – for farms and ranches less than 5 acres in size - adding the land under farm and ranch residences to the 'residential' side of the Gallagher equation would have lowered the 2009/10 residential assessment rate to 9.13%. If the land under the residences of farms and ranches between 10 and 99.99 acres were added to the 'residential' side of the Gallagher equation, the residential assessment rate would have drop to 9.02%. So, while the residential assessment rate would have been mathematically impacted, there would be no actual impact for 2009/10 since the rate remained at 7.96%. Although the residential assessment rate for 2011/12 will not be set until the 2011 legislative session, this exercise illustrates there is a fairly minimal impact to the

Gallagher equation with a small change from Agricultural classification to Residential classification for certain Ag residences.

Presentation on the Potential Property Tax implications for Specific Counties

In response to a request by task force members, Brad Hughes analyzed what – if any – impact there might be to the tax bills of farm residences in specific counties. Mr. Hughes surveyed all counties and asked them: 1.) What is your county's minimum building lot size?; 2.) How many agricultural residences are in your county (i.e. the number of properties that are currently classified as agricultural that have a residence on them)?; 3.) Of those minimum building lots, what's the average market value?; and 4.) What's the county's average mill levy? Twenty three counties responded to his survey. His analysis shows the average change in a property owner's tax bill **if** the home is determined to not be integral to an agricultural operation and is classified as residential. The impact varies depending on where the home in question resides. A residence in the eastern part of the state might see an average increase anywhere between $9 - $73. A residence in the resort areas of the state might see an average increase anywhere between $800 - $6,500.

Presentation on draft legislation

For purposes of discussion, CCI staff drafted two bills based on the concepts that received the most traction from the task force at their August 18th meeting. Option A1 amends the definition of agricultural land by stating that if the residence of a farm or ranch is not integral to the operation of the farm or ranch, the minimum lot size of the property will be classified as residential. Option A2 has this same provision and states that if the land around the minimum lot is also not integral to the farm or ranch operation, it too may be classified as residential.

Task Force Member Discussion

The task force spent the rest of the meeting discussing options A1 and A2. Some felt that option A2 was the best approach to addressing those who take advantage of the current loopholes. Others felt that A2 was too complicated and subject to potential abuse at the hands of the assessor. After a lengthy discussion about the merits of Option A2, a motion was made to take Option A2 off the table and only focus on Option A1. The motion passed with 6 'aye' votes, 1 'no' vote, 1 'abstention' and 1 member who was absent.

Turning their attention to Option A1, the task force agreed to a few conceptual changes. They are as follows:

1.) Change the 'minimum lot' language to some amount to be determined by the legislature but that is no larger than 2 acres.
2.) However, in the event that the landowner's actual lot size is less than whatever amount is selected by the legislature, the actual lot size should be used in these circumstances.

3.) Rather than requiring that the land under the residence or some other specific parcel be subject to potential reclassification, allow for an indiscriminate parcel of the land to be reclassified.

The task force members ended their conversation debating whether or not the final report should explicitly recommend that the legislature should consider legislation – along the lines of Option A1 – or simply state in the final report that these are some suggestions that the legislature could look at.

CCI staff was asked to write a draft report and the members of the task force would reach a conclusion on the item above at a later date.

Gallagher and Valuation Presentation to the Ag Task Force

by Division of Property Taxation - Greg Schroeder

#1 below shows the residential assessment rate calculation without an adjustment for agricultural residences
#2 shows an estimate of the rate calulation adjusted for the designation of a small site (1-5 acres) from ag. to residential
#3 shows an estimate of the rate calculation adjusted adjusted for the designation of a large site (35 acres) from ag. to residential

Values From 2009 Abstracts

Non-Residential Assessed Value	$54,472,286,961
Residential assessed value	$41,494,826,787
Residential actual value	$521,291,793,807

Value Adjustments - small residential site (based largely on 0520 abstract code and survey of counties)

Additional residential assessed value	$308,780,820
Additional residential actual value	$3,879,156,033
Loss of agricultural assessed value at 2 acres	$5,211,667

Value Adjustments - 35 acre site (based largely on 0540 and 0550 abstract codes)

Additional residential assessed value	$740,193,110
Additional residential actual value	$9,298,908,418
Loss of agricultural assessed value at 35 acres	$91,204,180

1) RATE CALCULATION FROM 2009 ABSTRACTS OF ASSESSMENT

True 2009 Non-Residential Assessed		Non-Res Target %		Total Assessed Target Value
$54,472,286,961	÷	53.17574049%	=	$102,438,229,264

Total Assessed Target Value		Residential Target %		Residential Assessed Target Value
$102,438,229,264	X	46.82425951%	=	$47,965,942,303

Residential Assessed Target Value		True 2009 Residential Actual Value		Residential Assessment Rate	
$47,965,942,303	÷	$521,291,793,807	=	9.201361477931%	
				9.20%	rounded

2) RATE CALCULATION IF AG RESIDENCE SITE RECLASSIFIED TO RESIDENTIAL - BASED ON FIGURES REPORTED FOR 1-5 ACRES

Adjusted 2009 Non-Residential Assessed		Non-Res Target %		Total Assessed Target Value
$54,467,075,294	÷	53.17574049%	=	$102,428,428,427

Total Assessed Target Value		Residential Target %		Residential Assessed Target Value
$102,428,428,427	X	46.82425951%	=	$47,961,353,134

Residential Assessed Target Value		Adjusted 2009 Residential Actual Value		Residential Assessment Rate	
$47,961,353,134	÷	$525,170,949,840	=	9.132522114637%	
				9.13%	rounded

3) RATE CALCULATION IF AG RESIDENCE SITE RECLASSIFIED TO RESIDENTIAL - BASED ON FIGURES REPORTED FOR 10-99.99 ACRI

Adjusted 2009 Non-Residential Assessed		Non-Res Target %		Total Assessed Target Value
$54,381,082,781	÷	53.17574049%	=	$102,266,714,624

Total Assessed Target Value		Residential Target %		Residential Assessed Target Value
$102,266,714,624	X	46.82425951%	=	$47,885,631,843

Residential Assessed Target Value		Adjusted 2009 Residential Actual Value		Residential Assessment Rate	
$47,885,631,843	÷	$530,590,702,224	=	9.024966257778%	
				9.02%	rounded

Estimated current tax liability based on an agricultural land valuation under the agricultural residence

23 of 64 Colorado Counties that responded to a request for data.

County	Minimum buildable site (acres)		Weighted Avg Ag land $/acre		Ag Land $/site	# of Ag residences		Ag Land $/site		Total actual valuation		Non-Res assessment rate		Total assessed valuation		Average mill levy		Total taxes		# of Ag residences	Average tax impact/year site under home is agricultural	
Cheyenne	1.00	x	$ 42.98	=	$ 42.98	250	x	$ 42.98	=	10,746	x	0.29	=	3,116	x	0.03503	=	$ 109	/	250	$ 0.44	Mostly
Baca	5.00	x	$ 33.59	=	$ 167.95	573	x	$ 167.95	=	96,235	x	0.29	=	27,908	x	0.05894	=	$ 1,645	/	573	$ 2.87	Eastern
Crowley	1.00	x	$ 17.22	=	$ 17.22	278	x	$ 17.22	=	4,787	x	0.29	=	1,388	x	0.07482	=	$ 104	/	278	$ 0.37	Counties
Kit Carson	5.00	x	$ 73.41	=	$ 367.03	855	x	$ 367.03	=	313,813	x	0.29	=	91,006	x	0.07530	=	$ 6,853	/	855	$ 8.02	
Sedgwick	2.00	x	$ 90.29	=	$ 180.59	235	x	$ 180.59	=	42,438	x	0.29	=	12,307	x	0.06536	=	$ 804	/	235	$ 3.42	
Otero	2.00	x	$ 96.94	=	$ 193.88	818	x	$ 193.88	=	158,592	x	0.29	=	45,992	x	0.05853	=	$ 2,692	/	818	$ 3.29	
Lincoln	5.00	x	$ 30.15	=	$ 150.73	449	x	$ 150.73	=	67,679	x	0.29	=	19,627	x	0.07500	=	$ 1,472	/	449	$ 3.28	
Rio Blanco	2.00	x	$ 36.24	=	$ 72.49	456	x	$ 72.49	=	33,055	x	0.29	=	9,586	x	0.03900	=	$ 374	/	456	$ 0.82	
Montezuma	3.00	x	$ 98.77	=	$ 296.32	1,530	x	$ 296.32	=	453,371	x	0.29	=	131,478	x	0.04500	=	$ 5,916	/	1530	$ 3.87	
Custer	5.00	x	$ 47.68	=	$ 238.41	743	x	$ 238.41	=	177,142	x	0.29	=	51,371	x	0.05870	=	$ 3,015	/	743	$ 4.06	
Weld (Eastern)	2.50	x	$ 96.85	=	$ 242.11	1,500	x	$ 242.11	=	363,172	x	0.29	=	105,320	x	0.06100	=	$ 6,425	/	1500	$ 4.28	
Gunnison	1.00	x	$ 60.45	=	$ 60.45	606	x	$ 60.45	=	36,632	x	0.29	=	10,623	x	0.04114	=	$ 437	/	606	$ 0.72	Mostly
Mesa	0.50	x	$ 91.16	=	$ 45.58	3,713	x	$ 45.58	=	169,245	x	0.29	=	49,081	x	0.05376	=	$ 2,639	/	3713	$ 0.71	Western & Central
Montrose	3.00	x	$ 109.83	=	$ 329.48	1,673	x	$ 329.48	=	551,223	x	0.29	=	159,855	x	0.05183	=	$ 8,286	/	1673	$ 4.95	Counties
La Plata	3.00	x	$ 111.33	=	$ 333.98	1,379	x	$ 333.98	=	460,560	x	0.29	=	133,562	x	0.03000	=	$ 4,007	/	1379	$ 2.91	
Chaffee	2.00	x	$ 111.34	=	$ 222.68	459	x	$ 222.68	=	102,212	x	0.29	=	29,641	x	0.04314	=	$ 1,279	/	459	$ 2.79	
Mineral	5.00	x	$ 54.52	=	$ 272.61	201	x	$ 272.61	=	54,795	x	0.29	=	15,891	x	0.05716	=	$ 908	/	201	$ 4.52	
Arapahoe	2.41	x	$ 29.47	=	$ 71.01	1,026	x	$ 71.01	=	72,860	x	0.29	=	21,129	x	0.09600	=	$ 2,028	/	1026	$ 1.98	
Ouray	6.00	x	$ 47.32	=	$ 283.94	224	x	$ 283.94	=	63,603	x	0.29	=	18,445	x	0.04827	=	$ 890	/	224	$ 3.97	
Weld (Western)	2.50	x	$ 96.85	=	$ 242.11	4,200	x	$ 242.11	=	1,016,881	x	0.29	=	294,896	x	0.08148	=	$ 24,027	/	4200	$ 5.72	
Routt	5.00	x	$ 47.05	=	$ 235.24	1,368	x	$ 235.24	=	321,806	x	0.29	=	93,324	x	0.05529	=	$ 5,160	/	1368	$ 3.77	Mostly
Pitkin (Basalt Area)	2.00	x	$ 120.95	=	$ 241.89	111	x	$ 241.89	=	26,850	x	0.29	=	7,786	x	0.06000	=	$ 467	/	111	$ 4.21	Resort
San Miguel	5.00	x	$ 50.08	=	$ 250.38	279	x	$ 250.38	=	69,855	x	0.29	=	20,258	x	0.02863	=	$ 580	/	279	$ 2.08	Counties
Summit	20.00	x	$ 61.85	=	$ 1,237.02	129	x	$ 1,237.02	=	159,576	x	0.29	=	46,277	x	0.05706	=	$ 2,640	/	129	$ 20.47	
Pitkin (Aspen area)	2.00	x	$ 120.95	=	$ 241.89	24	x	$ 241.89	=	5,805	x	0.29	=	1,684	x	0.03250	=	$ 55	/	24	$ 2.28	

Statewide tax implications based on adding a residential site value

23 of 64 Colorado Counties that responded to a request for data.

County	Respondent	Minimum buildable site (acres)	Total # of Ag residences		Average site market value		Total actual valuation		Residential assessment rate		Total assessed valuation		Average mill levy		Total taxes		Total # of Ag residences	Average tax impact/year site under home is residential	
Cheyenne	Ambie Cullens	1.00	250	x	$ 3,500	=	875,000	x	0.0796	=	69,650	x	0.03503	=	$ 2,440	/	250	$ 9.76	Mostly
Baca	Gayla Thompson	5.00	573	x	$ 2,500	=	1,432,500	x	0.0796	=	114,027	x	0.05894	=	$ 6,721	/	573	$ 11.73	Eastern
Crowley	Warren Davis	1.00	278	x	$ 6,000	=	1,668,000	x	0.0796	=	132,773	x	0.07482	=	$ 9,934	/	278	$ 35.73	Counties
Kit Carson	Abbey Mullis	5.00	855	x	$ 7,500	=	6,412,500	x	0.0796	=	510,435	x	0.07530	=	$ 38,438	/	855	$ 44.96	
Sedgwick	Eva Contreras	2.00	235	x	$ 10,000	=	2,350,000	x	0.0796	=	187,060	x	0.06536	=	$ 12,226	/	235	$ 52.03	
Otero	Ken Hood	2.00	818	x	$ 12,100	=	9,897,800	x	0.0796	=	787,865	x	0.05853	=	$ 46,111	/	818	$ 56.37	
Lincoln	Jeremiah Higgins	5.00	449	x	$ 12,705	=	5,704,545	x	0.0796	=	454,082	x	0.07500	=	$ 34,056	/	449	$ 75.85	
Rio Blanco	Renae Nielson	2.00	456	x	$ 30,000	=	13,680,000	x	0.0796	=	1,088,928	x	0.03900	=	$ 42,468	/	456	$ 93.13	
Montezuma	Mark Vanderpool	3.00	1,530	x	$ 50,000	=	76,500,000	x	0.0796	=	6,089,400	x	0.04500	=	$ 274,023	/	1530	$ 179.10	
Custer	J.D. Henrich	5.00	743	x	$ 40,000	=	29,720,000	x	0.0796	=	2,365,712	x	0.05870	=	$ 138,867	/	743	$ 186.90	
Weld (Eastern)	Brenda Dones	2.50	1,500	x	$ 50,000	=	75,000,000	x	0.0796	=	5,970,000	x	0.06100	=	$ 364,170	/	1500	$ 242.78	
Gunnison	Kristy Mcfarland	1.00	606	x	$ 75,000	=	45,450,000	x	0.0796	=	3,617,820	x	0.04114	=	$ 148,837	/	606	$ 245.61	Mostly
Mesa	Barb Brewer	0.50	3,713	x	$ 60,000	=	222,780,000	x	0.0796	=	17,733,288	x	0.05376	=	$ 953,337	/	3713	$ 256.76	Western & Central
Montrose	Brad Hughes	3.00	1,673	x	$ 65,000	=	108,745,000	x	0.0796	=	8,656,102	x	0.05183	=	$ 448,680	/	1673	$ 268.19	Counties
La Plata	Craig Larson	3.00	1,379	x	$ 135,000	=	186,165,000	x	0.0796	=	14,818,734	x	0.03000	=	$ 444,562	/	1379	$ 322.38	
Chaffee	Brenda Mosby	2.00	459	x	$ 117,000	=	53,703,000	x	0.0796	=	4,274,759	x	0.04314	=	$ 184,405	/	459	$ 401.75	
Mineral	Libby Lundock	5.00	201	x	$ 110,000	=	22,110,000	x	0.0796	=	1,759,956	x	0.05716	=	$ 100,599	/	201	$ 500.49	
Arapahoe	Steve Sneddon	2.41	1,026	x	$ 66,000	=	67,716,000	x	0.0796	=	5,390,194	x	0.09600	=	$ 517,459	/	1026	$ 504.35	
Ouray	Susie Mayfield	6.00	224	x	$ 140,000	=	31,360,000	x	0.0796	=	2,496,256	x	0.04827	=	$ 120,494	/	224	$ 537.92	
Weld (Western)	Brenda Dones	2.50	4,200	x	$ 125,000	=	525,000,000	x	0.0796	=	41,790,000	x	0.08148	=	$ 3,404,924	/	4200	$ 810.70	
Routt	Angela Finnegan	5.00	1,368	x	$ 203,750	=	278,730,000	x	0.0796	=	22,186,908	x	0.05529	=	$ 1,226,692	/	1368	$ 896.70	Mostly
Pitkin (Basalt Area)	Larry Fite	2.00	111	x	$ 225,000	=	24,975,000	x	0.0796	=	1,988,010	x	0.06000	=	$ 119,281	/	111	$ 1,074.60	Resort
San Miguel	Peggy Kanter	5.00	279	x	$ 900,000	=	251,100,000	x	0.0796	=	19,987,560	x	0.02863	=	$ 572,184	/	279	$ 2,050.84	Counties
Summit	Mike Petersen	20.00	129	x	$ 494,403	=	63,777,987	x	0.0796	=	5,076,728	x	0.05706	=	$ 289,663	/	129	$ 2,245.45	
Pitkin (Aspen area)	Larry Fite	2.00	24	x	$ 2,500,000	=	60,000,000	x	0.0796	=	4,776,000	x	0.03250	=	$ 155,220	/	24	$ 6,467.50	

Comparison: (Residential vs. Agricultural land valuation under the residence)

23 of 64 Colorado Counties that responded to a request for data.

County	Average tax impact per year site under home is agricultural	Average tax impact per year site under home is residential	(DIFFERENCE) Net Average tax impact per year if site value is changed from ag to res	
Cheyenne	$ 0.44	$ 9.76	$ 9.32	Mostly
Baca	$ 2.87	$ 11.73	$ 8.86	Eastern
Crowley	$ 0.37	$ 35.73	$ 35.36	Counties
Kit Carson	$ 8.02	$ 44.96	$ 36.94	
Sedgwick	$ 3.42	$ 52.03	$ 48.60	
Otero	$ 3.29	$ 56.37	$ 53.08	
Lincoln	$ 3.28	$ 75.85	$ 72.57	
Rio Blanco	$ 0.82	$ 93.13	$ 92.31	
Montezuma	$ 3.87	$ 179.10	$ 175.23	
Custer	$ 4.06	$ 186.90	$ 182.84	
Weld (Eastern)	$ 4.28	$ 242.78	$ 238.50	
Gunnison	$ 0.72	$ 245.61	$ 244.88	Mostly
Mesa	$ 0.71	$ 256.76	$ 256.05	Western & Central
Montrose	$ 4.95	$ 268.19	$ 263.24	Counties
La Plata	$ 2.91	$ 322.38	$ 319.47	
Chaffee	$ 2.79	$ 401.75	$ 398.97	
Mineral	$ 4.52	$ 500.49	$ 495.97	
Arapahoe	$ 1.98	$ 504.35	$ 502.37	
Ouray	$ 3.97	$ 537.92	$ 533.95	
Weld (Western)	$ 5.72	$ 810.70	$ 804.98	
Routt	$ 3.77	$ 896.70	$ 892.93	Mostly
Pitkin (Basalt Area)	$ 4.21	$ 1,074.60	$ 1,070.39	Resort
San Miguel	$ 2.08	$ 2,050.84	$ 2,048.76	Counties
Summit	$ 20.47	$ 2,245.45	$ 2,224.98	
Pitkin (Aspen area)	$ 2.28	$ 6,467.50	$ 6,465.22	

OPTION A1

Proposed Legislative Change for the Agricultural Classification Task Force's Consideration

The following language attempts to:

1.) Classify the minimum lot size as residential
2.) Exempt lands with minimum lot sizes that are integral to farming and ranching from any classification changes
3.) Define integral

SECTION 1 39-1-102 (1.6)(a) and ___ Colorado Revised Statutes

39-1-102 Definitions As used in articles 1 to 35 of this title, unless the context otherwise requires:

(1.6) (a) "Agricultural land" means either of the following:

(I)(A) 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 subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. "Agricultural land" under this subparagraph (I) ~~includes~~ DOES NOT INCLUDE THE MINIMUM LOT SIZE ~~land~~ underlying any residential improvement located on such agricultural land UNLESS THE RESIDENCE IS INTEGRAL TO AN AGRICULTURAL OPERATION. "AGRICULTURAL LAND" ~~and~~ also includes the land underlying other improvements if such improvements are an integral part of the farm or ranch and if such other improvements and the land area dedicated to such other improvements are typically used as an ancillary part of the operation. The use of a portion of such land for hunting, fishing, or other wildlife purposes, for monetary profit or otherwise, shall not affect the classification of agricultural land. For purposes of this subparagraph (I), a parcel of land shall be "in the process of being restored through conservation practices" if: The land has been placed in a conservation reserve program established by the natural resources conservation service pursuant to 7 U.S.C. secs. 1 to 5506; or a conservation plan approved by the appropriate conservation district has been implemented for the land for up to a period of ten crop years as if the land has been placed in such a conservation reserve program.

(II)(B) 'INTEGRAL TO AN AGRICULTURAL OPERATION' SHALL BE DEFINED IN MANUALS PROMULGATED BY THE DIVISION OF PROPERTY TAXATION AND SHALL CONSIDER THE LEVEL OF PERSONAL PARTICIPATION OF THE OCCUPANTS OF THE RESIDENCE IN THE OPERATION, WHETHER THE OWNER PERSONALLY PARTICIPATES IN THE OPERATION, WHETHER MULTIPLE PROPERTIES ARE INVOLVED IN A SINGLE AGRICULTURAL OPERATION, AND THE NATURE OF THE AGRICULUTURAL OPERATION ITSELF.

(#) "MINIMUM LOT SIZE"MEANS THE MINIMUM BUILDING LOT AREA FOR THE PROPERTY SPECIFIED IN A LAND USE ORDINANCE

(14.4) "Residential land" means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon. The term includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. AS DESCRIBED IN (1.6)(I)(A), THE TERM ALSO INCLUDES THE MINIMUM LOT SIZE WHEN A RESIDENCE LOCATED ON AGRICULTURAL LAND IS NOT INTEGRAL TO AN AGRICULTURAL OPERATION. The term does not include any portion of the land that is used for any purpose that would cause the land to be otherwise classified, except as provided for in section 39-1-103 (10.5). The term also does not include land underlying a residential improvement located on agricultural land.

SECTION 2. Applicability. This act shall apply to property tax years commencing on and after January 1, 2012.

SECTION 3. Effective date. This act shall take effect XXX, X, 2011; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section or part shall not take effect unless approved by the people at the general election to be held in November 2011 and shall take effect on the date of the official declaration of the vote thereon by the governor.

OPTION A2

Proposed Legislative Change for the Agricultural Classification Task Force's Consideration

The following language attempts to:

1.) Classify the minimum lot size as residential
2.) Exempt lands with minimum lot sizes that are integral to farming and ranching from any classification changes
3.) Specifies that for lands that don't meet the above exemption, any portion of the property that is not integral may be reclassified
4.) Define integral

SECTION 1 39-1-102 (1.6)(a) and ___ Colorado Revised Statutes

39-1-102 Definitions As used in articles 1 to 35 of this title, unless the context otherwise requires:

(1.6) (a) "Agricultural land" means either of the following:

(I)(A) 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 subsections (3.5) and (13.5) of this section, or that is in the process of being restored through conservation practices. Such land must have been classified or eligible for classification as "agricultural land", consistent with this subsection (1.6), during the ten years preceding the year of assessment. Such land must continue to have actual agricultural use. "Agricultural land" under this subparagraph (I) ~~includes~~ DOES NOT INCLUDE THE MINIMUM LOT SIZE ~~land~~ underlying any residential improvement located on such agricultural land UNLESS THE RESIDENCE IS INTEGRAL TO AN AGRICULTURAL OPERATION. "AGRICULTURAL LAND" ~~and also~~ SHALL BE PRESUMED TO includes the land AROUND THE MINIMUM LOT AND underlying other improvements if such LAND AND improvements are an integral part of the farm or ranch and if such other improvements and ~~the~~ land ~~area dedicated to such other improvements~~ are typically used as an ancillary part of the operation. The use of a portion of such land for hunting, fishing, or other wildlife purposes, for monetary profit or otherwise, shall not affect the classification of agricultural land. For purposes of this subparagraph (I), a parcel of land shall be "in the process of being restored through conservation practices" if: The land has been placed in a conservation reserve program established by the natural resources conservation service pursuant to 7 U.S.C. secs. 1 to 5506; or a conservation plan approved by the appropriate conservation district has been

implemented for the land for up to a period of ten crop years as if the land has been placed in such a conservation reserve program.

(II)(B) 'INTEGRAL TO AN AGRICULTURAL OPERATION' SHALL BE DEFINED IN MANUALS PROMULGATED BY THE DIVISION OF PROPERTY TAXATION AND SHALL CONSIDER THE LEVEL OF PERSONAL PARTICIPATION OF THE OCCUPANTS OF THE RESIDENCE IN THE OPERATION, WHETHER THE OWNER PERSONALLY PARTICIPATES IN THE OPERATION, WHETHER MULTIPLE PROPERTIES ARE INVOLVED IN A SINGLE AGRICULTURAL OPERATION, AND THE NATURE OF THE AGRICULUTURAL OPERATION ITSELF.

(#) "MINIMUM LOT SIZE"MEANS THE MINIMUM BUILDING LOT AREA FOR THE PROPERTY SPECIFIED IN A LAND USE ORDINANCE

(14.4) "Residential land" means a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon. The term includes parcels of land in a residential subdivision, the exclusive use of which land is established by the ownership of such residential improvements. AS DESCRIBED IN (1.6)(I)(A), THE TERM ALSO INCLUDES THE MINIMUM LOT SIZE WHEN A RESIDENCE LOCATED ON AGRICULTURAL LAND IS NOT INTEGRAL TO AN AGRICULTURAL OPERATION. The term does not include any portion of the land that is used for any purpose that would cause the land to be otherwise classified, except as provided for in section 39-1-103 (10.5). The term also does not include land underlying a residential improvement located on agricultural land.

SECTION 2. Applicability. This act shall apply to property tax years commencing on and after January 1, 2012.

SECTION 3. Effective date. This act shall take effect XXX, X, 2011; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section or part shall not take effect unless approved by the people at the general election to be held in November 2011 and shall take effect on the date of the official declaration of the vote thereon by the governor.