

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Petitioners:

JONATHAN B. SCARPELLI & REBECCA J. BAREFOOT, WILLIAM W. MUELLER & MARDI CHASE, JOYCE HOMES, INC., and MICHAEL R. HARRISON & REBECCA J. HARRISON,

v.

Respondent:

**DOUGLAS COUNTY BOARD OF
EQUALIZATION.**

Attorney or Party Without Attorney for the Petitioners:

Name: Lawrence R. Kueter, Esq.
Address: 633 - 17th Street, Suite #2200
Denver, Colorado 80202
Phone Number: (303) 292-5656
Attorney Reg. # 7493

**Docket Numbers: 37513,
37514, 37515, 37516**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on March 5, 2001, Harry J. Fuller and Mark R. Linné, presiding. Petitioner was represented by Lawrence R. Kueter, Esq. Respondent was represented by Kelly Dunnaway, Esq.

PROPERTY DESCRIPTION:

Subject properties are described as follows:

**PARCEL 2 ALLIS RANCH PRESERVE
(Douglas County Schedule No. R0398559) (Docket 37513)**

**PARCEL 4 ALLIS RANCH PRESERVE
(Douglas County Schedule No. R0398561) (Docket 37514)**

**PARCEL 5 ALLIS RANCH PRESERVE
(Douglas County Schedule No. R0398562) (Docket 37515)**

**PARCEL 6 ALLIS RANCH PRESERVE
(Douglas County Schedule No. R0398563) (Docket 37516)**

Petitioners are protesting the 2000 actual value of the subject properties, which after consolidation of the referenced docket numbers, consists of four residential properties located in the Allis Ranch Preserve in Douglas County, Colorado.

ISSUES:

Petitioners:

Petitioners contend that the Respondent has overvalued the subject properties by not properly classifying the subject properties as agricultural, under statutory provisions that permits agricultural status for property tax purposes for sites containing 80 acres or more that are subject to a conservation easement. The actual area of each 35-acre residential site, taken in tandem with the beneficial interest in the common area lands held under the easement, exceed the 80 acre minimum lot size, and thus entitle each of the appealed properties to take advantage of the statutory provisions pertaining to land impacted by conservation easements.

Respondent:

Respondent contends that the assigned value of the subject properties is supported by sales of similar properties, similarly situated, during the appropriate base period. The individual property owners hold title to 35-acre tracts, and they have no ownership in the land that is subject to the conservation easement. The Respondent asserts that membership in an entity that owns agricultural property cannot convert an individual's residential property into agricultural property. Given that the individually owned parcels are less than 80 acres, the statutory provisions do not apply, and the land is therefore properly valued as residential land.

FINDINGS OF FACT:

1. Petitioners' witness, Michael Harrison, President of the Allis Ranch Conservancy, testified that he purchased property in Allis Ranch Preserve in June 1996, and moved to the property in July 1998. The witness indicated that there are a total of 10 lots that comprise the residential component of the greater property. He described the geography of the property as containing a total of 829 acres that is divided into various parcels, including a 196-acre hay meadow parcel which fronts Highway 105, which he characterized as an active hay meadow. There is a riparian area west of Plum Creek. The topography rises in this area, and there are a total of 247 acres that are identified as hilly and include scrub oak. The ranch headquarters parcel encompasses a total of 35 acres, and represents the old ranch house for the original ranch.

The remainder of the site comprises the 10 individually owned residential development lots that are between the meadow and pasture.

2. The witness testified that each lot is divided into a homestead area and wildlife corridor. The corridor is the 100-year floodplain of West Plum Creek.

3. Mr. Harrison testified that there were restrictions on what can be done in each area, with each area having a different restriction. The wildlife area has significant restrictions, including a prohibition on fencing. He noted that all owners have common access to the wildlife area.

4. The witness testified that each site included a homestead area, which is intended as a homesite location, and the only improvement allowed outside of homesite is fencing for horses. The witness indicated that all construction must occur within the homesite.

5. The witness testified that less than 4% of the total property could be developed to any extent.

6. Mr. Harrison testified that title to the 479 acres of common holdings was held in the name of Allis Ranch Conservancy.

7. The witness testified that the value placed on lands held by the Conservancy was \$0.00. The entire value for the property is placed on the 10 individually owned residential lots. The value assigned to each lot by the assessor is \$260,000.00, or a total value for the 10 lots within the project of \$2,600,000.00. Four lots are considered within this hearing. The witness explained that the meadow component of the common area is leased for agricultural purposes to a commercial haying operation.

8. The witness testified that the title to each of the 10 lots is held by the homeowners who own each of the lots.

9. Mr. Harrison testified that the Allis Ranch Conservancy is made up of the 10 lot owners. Membership in the Conservancy automatically transfers when the ownership of the lots change.

10. Mr. Harrison described the rights of the members of the Conservancy. These include total and free access to each of the common areas. Also rights to the wildlife areas on each member's lot. Common right of access includes all of the Allis Ranch, except for the homestead (homesite) of each lot.

11. Mr. Harrison explained through his testimony that if the Conservancy was to dissolve and the property is sold, then each of the members receives 10% of the value of the property. The conservation easement is in perpetuity.

12. The witness testified that the Allis Ranch Conservancy manages the common areas as a group. Decisions are made at regular meetings. The lease with the hay operation, the ranch house, insurance, weed control, private roadways, fencing, all are managed from the homeowners group.

13. The witness testified that there were benefits to this type of ownership structure, specifically the ability to work together to maintain the open areas. Each member has agreed to the nature of the development as a community. The witness testified that he felt that as the owner of a lot, he had the responsibilities of ownership, primarily due to the fact that the lot owners make and fund all decisions through the annual budget. Each lot owner is responsible for financial upkeep. When the roadway needed repair, a special assessment was made.

14. Mr. Harrison testified under cross-examination that he had received a deed when he acquired his 35 acres. The witness indicated that he received membership in Allis Ranch Conservancy, and ownership in all common lands. He indicated that he did not receive legal title to anything other than 35 acres. The only ownership interest he holds is in the 35 acres that makes up his own site. The witness testified that Allis Ranch is a Colorado nonprofit corporation, and that if it were to dissolve, each owner would potentially receive 1/10 of the proceeds.

15. Mr. Harrison testified that the sale of the property would be a last resort, and he admitted that there was a very remote possibility that any money would go to the lot owners. The witness indicated that the only way to get title of the property would be for the Conservancy to buy the common areas. He further explained that the only right the lot owners have is a very remote possibility that another could not be found to take ownership in the common areas.

16. With respect to the current lease on the hay meadow operation, Mr. Harrison testified that the lessor is Allis Ranch Conservancy. He stated that income is obtained from the lease, which is then used for maintenance of common lands.

17. Mr. Harrison admitted in his testimony that a homeowner could not lease or sell any of the common area.

18. The witness testified that the ranch house is an historical ranch house, and is presently used as a ranch headquarters. The ranch house is rented out at the present, with the lessee working on the ranch as a handyman helping with fence repair, etc. He lives in the ranch house.

19. Mr. Harrison testified that he paid \$239,000.00, and that lot sales in the development ranged from \$229,000.00 to \$289,000.00, the later representing a resale.

20. Mr. Harrison testified that he felt that the value assigned by the assessor appears appropriate. He has no belief that the value is incorrect, and that inherent in the value of each lot is an allocated value of the other 479 acres.

21. The \$260,000.00 value of each lot is enhanced by the common lands. The value of the common areas is now in the value of each individual lot.

22. In response to questions from the Board, Mr. Harrison testified that the public could not access the property. Access is restricted to owners of the lots.

23. Mr. Harrison testified in redirect testimony that these covenants are recorded against the property. The conservation easement is enforceable by Colorado Open Lands. There are overlapping restrictions: the covenants are enforced by the owners; conservation easement is enforced by Colorado Open Lands.

24. Under recross-examination, Mr. Harrison indicated that the subject properties were classified as agricultural prior to development of the property. The property was all agricultural; when the first lot purchasers acquired land, the assessor's office split the classification. He indicated that the wildlife corridor was maintained as agricultural, while the residential lots were assessed as vacant land. For 2-3 years, lots without homes had this split classification. During the course of the appeals process, there was a discussion with the state and county about the appropriateness of valuing the land in this manner. The vacant land was changed back to agricultural, and vacant land is now classified as agricultural. The land under dwellings is classified as residential.

25. Mr. Harrison testified that the conservation easement was set up before lots were sold.

26. Based on the Petitioners' petitions, the following values were requested:

Docket 37513	Schedule Number: 0398559	\$ 66,276.00
Docket 37514	Schedule Number: 0398561	\$354,265.00
Docket 37515	Schedule Number: 0398562	\$ 77,418.00
Docket 37516	Schedule Number: 0398563	\$568,166.00

27. Elizabeth Richardson, an employee of Colorado Open Lands (COL) since 1991, testified that COL was formed in 1981 as a 501(c)3. COL currently has 41 easements in place. Ms. Richardson indicated that COL has preserved 30,000 acres under easements, and 40,000 acres in other manners.

28. Ms. Richardson testified that while she was not directly involved in the development of the Allis Ranch project, she was at many of the meetings and was present during the process.

29. Ms. Richardson testified that COL determined that the wildlife corridor impacted by West Plum Creek is a very special area. COL also determined that there was a need to preserve the agricultural background of the property. Open space and scenic elements were also very important. The concept of the 35-acre pieces and the sense of community were also important.

30. The witness described in her testimony the ongoing role that COL has with the conservation easement. An annual on-site visit is made to make sure that the terms of the conservation easement are being met. There are scheduled meetings with the Conservancy to discuss any problems that might be observed. A report is generally filed after the visit. Ms. Richardson testified that she also has numerous conversations with the owners group. She had assisted in informing a homeowner with respect to his responsibilities as an owner.

31. Ms. Richardson testified that her view on public easement was that it is permitted at the discretion of the homeowners. Public benefit is achieved by keeping the space open and undeveloped.

32. Respondent's witness, Larry Shouse, Senior Appeals Appraiser with the Douglas County Assessor's Office, testified that he had valued the subject properties based on the direct sales comparison approach. He further indicated that he had considered only the individually owned land.

33. Mr. Shouse testified that he utilized the market approach to value, and concluded the following values for the subject properties:

Docket 37513	Schedule Number: 0398559	\$291,411.00
Docket 37514	Schedule Number: 0398561	\$571,724.00
Docket 37515	Schedule Number: 0398562	\$296,759.00
Docket 37516	Schedule Number: 0398563	\$775,723.00

34. Ms. Shouse testified that the Douglas County Assessor's Office felt that the Allis Ranch Conservancy was a homeowner's association, and as such the common lands were accorded a \$0.00 value, which is the typical procedure for the office.

35. The witness testified that he used properties of like or similar comparison to determine the value of the subject. Adjustments were made based on consideration of factors from the market that would make a difference.

36. Mr. Shouse testified that the county does not tax the owners for the 479-acre preserve.

37. Mr. Shouse testified that if the open space lands were a golf course, for example, they would be treated in the same manner. The witness provided further detail by testifying that if an adjacent owner of a lot near a golf course was also a 10% owner in the golf course, that his land would not be valued in the same manner as the golf course, but rather would be valued as single-family residential.

38. Mr. Shouse testified that unimproved properties at Allis Ranch are classified and valued as agricultural. Once a single-family residence is built, it becomes single-family residential.

39. The witness testified that his understanding of statute required that it be classified and valued as a single-family residence, and further, based on discussions with the Division of Property Taxation, he felt that it was an all or nothing classification. Mr. Shouse testified that the subject sites are under 80 acres in size. Once the site was improved, it lost its agricultural classification.

40. The witness further testified that the common ownership does not turn a property into residential or agricultural. He gave the example of two jointly owned parcels, one improved and one vacant. He indicated that the improved parcel would be residential and the other would be agriculturally classified and valued.

41. The witness testified under cross-examination that only Allis Ranch sales were utilized in arriving at a value for the subject parcels.

42. The witness testified that under a hypothetical situation in which a landowner owns 80 acres or more, a parcel could qualify as agricultural. The witness further indicated that if there were a residence on the parcel, the agricultural classification would be used in more than 80 acres were under a conservation easement.

43. Based on the market approach, Respondent's witness concluded values for the four lots that comprise the subject properties as follows:

Docket 37513	Schedule Number: 0398559	\$291,411.00
Docket 37514	Schedule Number: 0398561	\$571,724.00
Docket 37515	Schedule Number: 0398562	\$296,759.00
Docket 37516	Schedule Number: 0398563	\$775,723.00

44. Mr. Harrison was recalled to testify concerning one specific lot, identified as Lot 6. He indicated that he owns Lot 6, and uses approximately 4¼ acres for agricultural purposes. The Allis Ranch's historic hay meadow was located on Lots 6 and 7.

45. The witness testified that he has been managing the 4¼ portion of the property as a hay meadow, and that he grows high quality Brome Hay. The witness indicated that though the land is not leased, it is contracted for harvesting.

46. In cross-examination testimony, Mr. Harrison indicated that the hay already existed on the parcel when he purchased the lot. His further testified that his 1998 sales were 100 bales at \$3.50 per bale. In 1999 he sold 164 bales at \$4.00 per bale. In 2000 only 30 bales were harvested due to drought conditions, and these were given at no charge to the harvester in exchange for harvesting the hay produced.

47. Mr. Harrison testified in redirect testimony that the hay meadow is not irrigated, and further that the hay meadow which the Conservancy owns is also not irrigated.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject properties were correctly valued for tax year 2000.

2. The Board has considered the Stipulated Facts, the Brief In Support of Allis Ranch Tax Appeal, the Reply Brief, and the Board's file on the above-captioned matter.

3. The Board concurs with the Respondent's assertion that the Petitioners have no ownership interest in the agricultural component of the Allis Ranch. The Petitioners received no interest in the corporate-owned property, and though there is a claim to an intangible right in the agricultural lands that are owned by the Conservancy, this intangible element is more a kin to a personal property or potential future interest, than an owned interest in the realty. The only ownership asserted by the Petitioners is that conveyed by deed for the 35-acre tracts upon which residences are permitted to be built. A 1/10 interest in a corporation that owns agricultural land does not equate to the ownership of agricultural land. Further, neither proximity nor ownership in a corporation equates to ownership in agricultural land. The testimony firmly established that each of the owners within the Allis Ranch Preserve actually own 35 acres.

4. The statutory provisions of C.R.S. 39-1-102, which call for a minimum lot size of 80 acres under perpetual conservation easement, have not been met, and the beneficial ownership argument requiring the residential and agricultural uses to be cobbled together is an inappropriate mechanism to circumvent the intent of statute. The owners of the individual lots do not own a specific 47.9-acre parcel, but rather, have an intangible interest only.

5. The statutory provisions that permit an agricultural classification for sites of less than 80 acres do not apply to parcels with residential improvements. Given that several of the subject sites do, in fact, contain residential improvements, this provides additional support for the tenant that they are ineligible for the classification as prescribed by statute.

6. The overall valuation of the subject properties presented by the Respondent appears appropriate and supported by the market data available.

7. With respect to the secondary matter pertaining to the portion of Lot 6 from which hay is harvested, the Board notes that the sale of hay is incidental to the residential use, and thus should be valued as a residential use.

ORDER:

The petitions are denied.

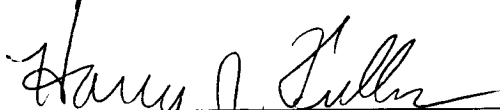
APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

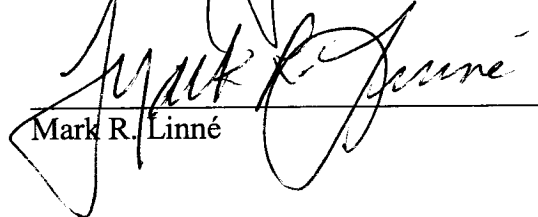
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 17th day of April, 2001.

BOARD OF ASSESSMENT APPEALS



Harry J. Fuller

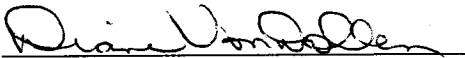


Mark R. Linné

This decision was put on the record

APR 17 2001

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



Diane Von Dollen



37513-16.01