

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner: LADYBUG CORP.,</p> <p>v.</p> <p>Respondent: DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: F. Jerome Thomas Address: 4520 North Lariat Drive Castle Rock, Colorado 80104 Phone Number: (303) 688-3664 E-mail: Attorney Reg. No.:</p>	<p>Docket Number: 37705</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 14, 2001, Mark R. Linné, J. Russell Shaw, and Harry J. Fuller presiding. Petitioner, was represented by F. Jerome Thomas, Agent, appeared pro se. Respondent was represented by Lance Ingalls, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**LOTS 1-12 BLK 1, LOTS 1-3 BLK 2, LOTS 1-3 BLK 3,
BROOKSIDE BUSINESS CENTER No.4
(Douglas County Schedule Nos. R0410734 through R0410751)**

Petitioner is protesting the 2000 actual value of the subject properties: 18 platted, vacant, platted only parcels in the Brookside Business Center.

ISSUES:

Petitioner:

Petitioner contends that the subject properties have been incorrectly classified. He contends the subjects have been used for agricultural purposes. He contends that if the subjects have been correctly classified, they have been overvalued.

Respondent:

Respondent contends that the subject properties have been properly classified and valued as vacant commercial land.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Jerome Thomas, Agent, presented the appeal on behalf of the Petitioner.
2. Based on the earning capacity of the land, Petitioner presented indicated values of:

<u>Schedule No.</u>	<u>Indicated Value</u>
410734	\$25.00
410735	\$37.00
410736	\$22.00
410737	\$78.00
410738	\$24.00
410739	\$25.00
410740	\$24.00
410741	\$25.00
410742	\$20.00
410743	\$25.00
410744	\$43.00
410745	\$28.00
410746	\$24.00
410747	\$23.00
410748	\$25.00
410749	\$30.00
410750	\$30.00
410751	\$21.00

3. Petitioner presented no comparable sales for the Board's consideration. He testified there are agricultural pursuits on all 18 sites.

4. The witness testified that the subjects have not been ranched for three years. However, he testified that the subjects have been used in a bee operation since April of 1994, and that he also operates a nursery on site. He cited a statute, 35-1-102 (6), concerning the definition of "agriculture." He described the cacti that are grown on site and sold as an agricultural product. He described plants that were brought on site to develop and then sold. The witness described the bee operation on site. Additionally, he cited the "Preble's Meadow Jumping Mouse" as an endangered species that has adversely affected the subject value.

5. The witness addressed the “jumping mouse” issue. He testified that a potential developer backed out of developing the subjects because of the mouse. As of May 13, 1998, the mouse was placed on the endangered species list. The species is protected from “any harassment.” He testified that the ongoing agricultural pursuits are allowable under these restrictions. He produced an exhibit that listed the “East Plum Creek” area as a potential mouse habitat. He produced exhibits from the Town of Castle Rock and Douglas County calling attention to the mouse. He produced an exhibit from the U.S. Fish and Wildlife Service that stated that there might be a mouse problem within 300 feet of East Plum Creek. The witness contracted with an environmental consultant that walked the perimeter. The consultant wrote a letter that stated since the Fish and Wildlife Service assumes the mouse is present within 300 feet of the creek, that additional studies in this area would be not cost effective. A letter from the Town of Castle Rock recommended a vacation of the plat that is affected by the mouse. The witness followed this advice and replatted the subjects into six buildable lots. However, the Board is accepting jurisdiction for 18 lots. The six lots are for a subsequent taxable year. He described certain development problems concerning curb, gutter, and paving on a number of the replatted lots. He testified there is access to only two lots (Lots 1 & 2).

6. Under cross-examination, the witness admitted the subjects comprise 25 acres. He admitted that the 300 linear feet “Mouse Protection Area” is a proposal; the mouse has never been found on his property; he has not applied for an environmental “take” permit; bees make a “poor house pet” and are not candidates for domestication. The beehives are on Lot 7. Bees range from 8 to 10 miles from their hives.

7. Petitioner is requesting a 2000 actual value for the subject properties of:

<u>Schedule No.</u>	<u>Indicated Value</u>
410734	\$25.00
410735	\$37.00
410736	\$22.00
410737	\$78.00
410738	\$24.00
410739	\$25.00
410740	\$24.00
410741	\$25.00
410742	\$20.00
410743	\$25.00
410744	\$43.00
410745	\$28.00
410746	\$24.00
410747	\$23.00
410748	\$25.00
410749	\$30.00
410750	\$30.00
410751	\$21.00

8. Respondent's witness, Mr. Larry Shouse, Certified General Appraiser with the Douglas County Assessor's Office, presented indicated values based on the market approach of:

<u>Schedule No.</u>	<u>Indicated Value</u>
410734	\$16,480.00
410735	\$24,000.00
410736	\$14,240.00
410737	\$50,080.00
410738	\$ 25.00
410739	\$16,160.00
410740	\$15,680.00
410741	\$16,000.00
410742	\$12,640.00
410743	\$16,960.00
410744	\$27,520.00
410745	\$17,920.00
410746	\$15,360.00
410747	\$14,560.00
410748	\$15,840.00
410749	\$18,880.00
410750	\$19,040.00
410751	\$13,120.00

9. Respondent's witness presented three comparable sales ranging in sales price from \$110,000.00 to \$1,505,900.00 and in size from 10 to 35.407 acres. No adjustments were made. The sales ranged from \$11,000.00 to \$42,531.00 per acre.

10. The subjects were valued as raw, vacant land at \$16,000.00 per acre. The witness disagrees with any agricultural classification on the 17 parcels. The 18th parcel, Schedule No. 0410738, has been assigned a \$25.00 value due to the presence of beehives. He testified there has been no recent grazing activity on site.

11. Under cross-examination, the witness admitted that two of the three comparables have access. He admitted that there is an access problem in the subject subdivision. He reiterated the subject is valued as raw land.

12. Respondent assigned actual values based on the market approach for tax year 2000 of:

<u>Schedule No.</u>	<u>Indicated Value</u>
410734	\$16,480.00
410735	\$24,000.00
410736	\$14,240.00
410737	\$50,080.00
410738	\$ 25.00
410739	\$16,160.00
410740	\$15,680.00
410741	\$16,000.00
410742	\$12,640.00

410743	\$16,960.00
410744	\$27,520.00
410745	\$17,920.00
410746	\$15,360.00
410747	\$14,560.00
410748	\$15,840.00
410749	\$18,880.00
410750	\$19,040.00
410751	\$13,120.00

13. Mr. Thomas recalled himself as a rebuttal witness. He raised the analogy of cows in a barn and bees in a hive. The cows are granted grazing outside of the barn. The Respondent has granted agricultural status to the land under the hives only.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2000.

2. The Board has carefully considered all admitted evidence and testimony and has adjusted the subjects' value. We reject the Petitioner's contention that the 17 sites are agricultural. We accept the Respondent's commercial classification and market approach to value with one adjustment. Although the physical presence of the elusive rodent was not definitively proven on site, we are convinced the "mouse" would have an effect on the subjects' market value. We are convinced that an informed purchaser of the subjects, within the base year market restrictions, would have taken the "mouse" into consideration in their negotiations. The assessor's raw land value of \$16,000.00 per acre would appear appropriate for non-mouse affected acreage. We do not believe it is supportable for the subjects.

3. The Board recognizes Sales No.1 and No.3 with unadjusted sales prices of \$16,776.00 and \$11,000.00 per acre respectively. With sales dates less than six months apart, the roughly \$5,000.00 per acre difference could be attributed to the relative land area and location. We believe that the "Preble's Meadow Jumping Mouse" issue would have a similar effect on value. Consequently, we have adjusted each of the 17 commercial sites to \$11,000.00 per acre. The 18th site has already been classified and valued on an agricultural basis.

4. The Petitioner requested an agricultural classification and valuation on 17 sites. We were not convinced. The agricultural lease was not accompanied with any corroborating evidence that showed the lease was actually executed. And if in fact, the entire 25 acres were "grazed" by the bees, we were not presented a stipulation that would have allowed the owner's nursery operation on site. The nursery operation itself had no supporting documentation as to agricultural income or expenses. The Board did not find any substantiation for a nursery or apiary operation on site.

5. The Board concluded that the 2000 actual values of the subject properties should be reduced to:

<u>Schedule No.</u>	<u>Indicated Value</u>
410734	\$11,330.00
410735	\$16,500.00
410736	\$ 9,790.00
410737	\$34,430.00
410738	\$ 25.00
410739	\$11,110.00
410740	\$10,780.00
410741	\$11,000.00
410742	\$ 8,690.00
410743	\$11,660.00
410744	\$18,920.00
410745	\$12,320.00
410746	\$10,560.00
410747	\$10,010.00
410748	\$10,890.00
410749	\$12,980.00
410750	\$13,090.00
410751	\$ 9,020.00

ORDER:

Respondent is ordered to reduce the 2000 actual value of the subject properties as stated in Paragraph No. 5 above, with all values attributable to land.

The Douglas County Assessor is directed to change her records accordingly.

APPEAL:

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

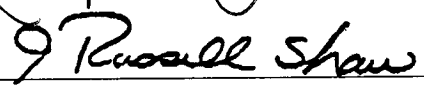
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 14th day of March, 2001

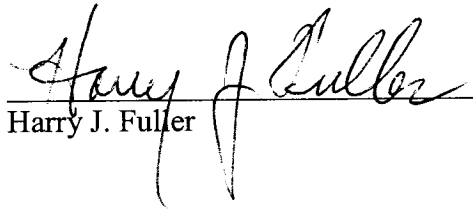
BOARD OF ASSESSMENT APPEALS



Mark R. Linné



J. Russell Shaw

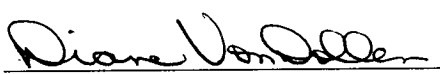


Harry J. Fuller

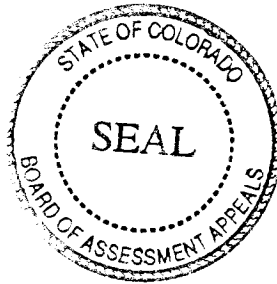
This decision was put on the record

MAR 14 2001

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



Diane Von Dollen



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