

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>BERNARD A. ERTHAL,</p> <p>v.</p> <p>Respondent:</p> <p>LARIMER COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Bernard A. Erthal Address: 733 Kimball Road Fort Collins, Colorado 80521 Phone Number: (970) 484-4461 E-mail: Attorney Reg. No.:</p>	<p>Docket Number: 38130</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 8, 2001, Judge Nuechter and Karen E. Hart presiding. Petitioner appeared pro se. Respondent was represented by Jeanine Haag, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**LOTS 6, 7 & 8, BLK 3; NW ½ LOT 21, ALL LOTS 22 & 23, BLK 4,
HIAWATH A HTS
(Larimer County Schedule Nos. R0321672, R0321974)**

Petitioner is protesting the 2001 actual value of the subject properties, two vacant land parcels located in the Hiawatha Heights subdivision in Red Feather Lakes. The properties are 37,563 square feet and 5,835 square feet in size.

ISSUES:

Petitioner:

Petitioner contends that there is no access to the subject properties. Access from the north would be difficult, if not impossible, due to the close proximity of existing houses and the need to blast rock to create an access road. His experience as a hard-rock miner is that a road cannot be built there.

Respondent:

Respondent contends that legal, platted access is available from the north. A discount was applied to the market value of the subject properties to account for the access difficulty.

FINDINGS OF FACT:

1. Mr. Bernard Erthal, Petitioner, presented the appeal on his own behalf.
2. Petitioner presented an indicated value of \$500.00 each for the subject properties.
3. Mr. Erthal testified that a building was constructed across the south access right-of-way to the subject properties, blocking access from the south. The property owners to the south will not allow access across their properties. It would not be physically possible anyway, due to rock outcroppings.
4. Mr. Erthal testified that access from the north, if any, is not developed. Each of the properties to the north has houses on them, which are located about 60 feet apart. There is a rock outcropping between the houses, and these rocks would need to be blasted to develop the access road. This would be difficult due to the close proximity of the houses. He was a hard-rock miner and is familiar with what it would take to remove the rock to build a road.
5. Mr. Erthal testified that there have been no surveys done of the area. He admits his properties are good and beautiful pieces of real estate, but believes they are worthless without access.
6. Petitioner's witness, Mr. Steven Erthal, son of the Petitioner, testified that he worked with the real estate agent when the properties were purchased. At that time, they believed access was available from the south. They did not discover the problem until after they had purchased the subject properties. The problem of people building on the wrong properties is ongoing in the Red Feather Lakes area, according to conversations he has had with the Larimer County building officials. Even so, permits were granted and variances were given. He feels it was obvious that the offending building was being built in the wrong place, across the right-of-way, and he believes the county should be held accountable. He has a recent map of the area that does not show access on the north.

7. Petitioner's witness, Mrs. Daisy Erthal, wife of Petitioner, testified that they did not know about the problem with the right-of-way when the properties were purchased.

8. Petitioner is requesting a 2001 actual value of \$500.00 for each of the subject properties.

9. Respondent's witness, Ms. Jody Masters, a Licensed Appraiser with the Larimer County Assessor's Office, presented an indicated value of \$6,300.00 per parcel for the subject properties, based on the market approach.

10. Respondent's witness presented 3 comparable sales ranging in sales price from \$6,000.00 to \$8,500.00 and in size from 12,807 to 18,390 square feet. After time adjustments were made, the sales ranged from \$6,822.00 to \$9,665.00.

11. Ms. Masters testified that she has inspected the property. She spoke with and toured the area with Mr. Reid Tippy, owner of Lot 5. Mr. Tippy is familiar with the area, as he is a longtime resident.

12. Ms. Masters testified that the subject properties are listed by the assessor's office as two parcels, one being much larger in size than the other. Both parcels are treed with an open area in the middle. It is a nice building site with a gentle rise.

13. She has reviewed all documents on record, including replats for Hiawatha Heights. The right-of-ways referred to for the subject properties on the original plat have not been vacated. The plat in Petitioner's Exhibit A is not a legally recorded plat. It is a parcel map created by the GIS Department and is a work-in-progress map.

14. Ms. Masters explained the access photos in her exhibit, and used the original plat map of Hiawatha Heights to demonstrate where the various access routes to the subject properties were located.

15. Ms. Masters testified that she looked for sales from the five-year time frame ending June 30, 2000. Comparable Sales 2 and 3 have driveway-type access, which would be similar to the subjects' proposed access. The access problems in the area are well known, and she believes any access issues are reflected in the sales prices of the comparables.

16. Ms. Masters is recommending a 1/6 reduction in the subject properties' assigned values, due to the access problems. She arrived at this percentage as access is one of the six bundle of rights associated with real property.

17. Under cross-examination, Ms. Masters admitted that she was not shown any survey markers by Mr. Tippy when she toured the area. She believes that the area is buyer-beware, and a buyer should rely on a realtor familiar with the area. Petitioner's property is the only vacant land in the area situated on the top of the hill. She believes that a road can be built to the subject properties, as there is legal access.

18. Respondent assigned an actual value of \$7,620.00 to each of the subject properties for tax year 2001, but is recommending a reduction to \$6,300.00 each.

19. In rebuttal, Mr. Steven Erthal testified that the south access road blocked by the garage is the road represented to him by Mr. Tippy as being the access to the subject property prior to purchase. He pointed out that the area has not been surveyed, so it is uncertain as to whether any of the existing roads are correctly located in the legal right-of-ways.

20. In rebuttal, Ms. Erthal testified that there is no existing road located between the two houses on the north, and there were rocks located between them.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.

2. The Board was not convinced that the mere presence of a platted access on a map would be sufficient evidence that sufficient access was available. There is a second issue of whether that access would be affordable. Neither party presented photos or estimates of what the construction costs for such an access would entail. However, Mr. Erthal testified that he had been a hard-rock miner and was, therefore, familiar with what efforts would be needed to construct a road from the north access point. The Board was convinced that the close proximity to each other of the two houses located north of the subject property, coupled with the rock terrain and topography, would make the construction of such an access road difficult and expensive.

3. The Board believes that any purchaser of the subject properties would consider the availability of and cost of constructing access to the property. This issue could have a severe impact on the subject property value. Petitioner testified that he was unaware of the access problem at the time of purchase, and such knowledge would have affected their decision to purchase the property. Petitioner would be required to disclose this issue to any potential purchaser, which the Board believes would significantly affect the sales price of the subject.

4. Respondent's witness testified that she felt the access issues were adequately reflected in the sales prices of the comparable sales, but there was no accompanying market data study to confirm the testimony. The Board notes that the witness testified that Comparable Sales 2 and 3 had similar access issues as the subject, but that driveways to these properties are in place. Comparable Sale 1 was admitted to having somewhat better access than the other two comparables or the subject. The Board notes that no adjustments were made to any of the comparable sales for this difference in type of access, site size, location, views, proximity to the lake, or any other physical differences as compared to the subject. There were no photos, descriptions, or other supporting documentation for the comparable properties in Respondent's exhibit.

5. Respondent's witness furnished a number of photos of a roadway located to the west of the subject properties, but testified that better access would be available from the east road. There were no photos available from her recommended access road.

6. The Board was not persuaded that the comparable properties had similar access issues as the subject, and was also not persuaded that adjustments for differences in physical characteristics were not warranted. The Board recognizes that Respondent attempted to make some additional adjustment for the access issue, but this adjustment was not market derived.

7. After carefully reviewing all evidence and testimony, the Board was most persuaded by that of Petitioner.

8. The Board concluded that the 2001 actual value of the subject properties should be reduced to \$500.00 for each parcel.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject properties to \$500.00 for each parcel.

The Larimer County Assessor is directed to change his 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 20th day of November, 2001.

BOARD OF ASSESSMENT APPEALS

This decision was put on the record

NOV 19 2001

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

Judee Nuechter

Judee Nuechter

Karen E. Hart

Karen E. Hart

Diane Von Dollen

Diane Von Dollen

