

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Petitioners:

**WALTER L. MEYER SPOUSES TRUST,
WALTER L. MEYER FAMILY TRUST,
CADDO DEVELOPMENT LLC,
TURNBERRY DEVELOPMENT LLC,
WALTER L. MEYER FAMILY TRUST,**

v.

Respondent:

GRAND COUNTY BOARD OF EQUALIZATION.

Attorney or Party Without Attorney for the Petitioner:

Name: Stephen Meyer
Address: 1028 Turnberry Circle
Louisville, Colorado 80027
Phone Number: (303) 295-3822

**Docket Numbers:
40363, 40364, 40365,
40366, 40367**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 6, 2003, Rebecca Hawkins and Karen E. Hart presiding. Mr. Stephen Meyer, one of the trustees, represented the appeal on behalf of Petitioners: Walter L. Meyer Spouse's Trust, Walter L. Meyer Family Trust, Caddo Development LLC, Turnberry Development LLC and Walter L. Meyer Family Trust. Respondent was represented by Anthony Dicola Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Docket No. 40363: **Grand County Schedule No. R029170**
2.210 Acres, Parcel B, Block 2, Forest Meadows Solar Community

Docket No. 40364: **Grand County Schedule No. R029114**
4.2 Acres, Parcel A, Block 3, Forest Meadows Solar Community

Docket No. 40365 **Grand County Schedule No. R029180**
.82 Acres, Parcel B, Block 3, Forest Meadows Solar Community

Docket No. 40366 **Grand County Schedule No. R029150**
2.092 Acres, Parcel C, (Resub) Trs D/E (Resub) Block 4, Forest Meadows Solar Community, Less .008 acres desc at rec #2002-001871

Docket No. 40367 **Grand County Schedule No. R029160**
1.13 Acres, Parcel B, Block 1, Forest Meadows Solar Community

Petitioners are protesting the 2002 actual value of the subject properties. The subject properties consist of five vacant parcels totaling 10.45 acres located in the town of Fraser, Colorado. Some of the subject properties are influenced by Big Elk Creek and include areas of wetlands. The subject properties are currently used for grazing.

ISSUES:

Petitioners:

Petitioners agree that the market approach is appropriate in calculating the actual value of the subject properties. Petitioners agree with the comparables used by Respondent, but believe an important sale was not included. Petitioners contend that the market approach is only appropriate when sales are adjusted for dissimilarities with the subject. Respondent did not adjust for certain dissimilarities that include location, zoning and cost of development. Petitioners used various means of adjusting the actual values of the subject parcels: price per square foot, price per developable unit, price per unit comparison, price per buildable acre and price per cubic foot. Petitioners also contend that approximately three acres of wetlands complicate development and prevent the sale of the subject properties. There are excessive costs involved in the development of the subject properties due to the existence of the wetlands.

Respondent:

Respondent contends that the subject properties have been correctly valued using the market approach. Sales have been properly adjusted resulting in a well-supported value for the subject properties. The subject properties are conveniently located at the commercial center of Grand County.

FINDINGS OF FACT:

1. This hearing is a consolidation of five Dockets:

Docket #40363 – Schedule # R029170
Docket #40364 – Schedule # R029114
Docket #40365 – Schedule # R029180
Docket #40366 – Schedule # R029150
Docket #40367 – Schedule # R029160

The Board heard testimony for Docket No. 40363, Schedule No. R029170, concerning the comparable properties and the restrictive issues associated with this parcel. All parties agreed that the issues are the same and apply to all five properties (Docket Nos. 40363 through 40367).

2. Petitioner, Mr. Stephen Meyer, testified that when assessing Docket Nos. 40363, 40364, 40365 and 40367, the Respondent made the assumption that the properties would be considered an assemblage. Two adjacent properties owned by Caddo Development LLC are not being contested at this time. They are included in the assemblage and are almost entirely wetlands. Both parties agree that in order to develop the subject properties, all parcels must be included in the assemblage. Mr. Meyer testified that Docket Nos. 40363, 40364, 40365 and 40367 are best valued as an assemblage. It is easier to replace wetlands on other portions of the property if the land is treated as a whole. Also, if the parcels were separated and sold, a subdivision plat approved 20 years ago would have to be followed. This subdivision plat places numerous encumbrances on the property that affect salability and complicate the wetlands issue.

3. Mr. Meyer testified that the wetlands must be delineated in order to successfully sell the subject properties. The owners have attempted to delineate the wetlands in the past. In August 2001, the owners received permission to impact 1.42 acres. Every 1.0 acre of impacted wetlands must be replaced with 1.3 acres of wetlands somewhere else on the property. Mr. Meyer owns a wetlands permit issued by the Army Corps of Engineers. He testified a buyer could obtain their own wetlands permit with the cooperation of the Meyer family.

4. Mr. Meyer presented the following total value for all parcels:

Market: \$617,705.00 to \$652,705.00

5. Mr. Meyer testified that the subject properties were purchased by his father, Walter L. Meyer, in 1980. He sold his interest to a group of developers in the mid-1980's, who subsequently went bankrupt due to a bad market. Walter L. Meyer regained ownership of the property in the mid-to late 1980's due to foreclosure. Between the mid-1980's and 1993, the properties sat idle. Two irrigation ditches flowing under the railroad tracks supply water to the subject properties. Return flow irrigation water continued to flow onto the properties from an adjacent ranch. The water kept a hay meadow wet and flooded parts of the excavated roadbed. Much of this area became wetlands subject to the jurisdiction of the U.S. Army Corps of Engineers.

6. Mr. Meyer testified that the subject properties are located within the boundaries of the town of Fraser and have good prospects for development. Access to the subject properties is from either Elk Creek Drive or Grand County Road (a.k.a. CR 72). When Fraser Parkway is completed, it will provide access to the subject properties, will parallel Highway 40, and will be considered a main thoroughfare. Availability of utilities varies per parcel depending on location. The parcels are zoned as follows:

R029114	R-3
R029150	B-Business
R029160	B-Business
R029170	B-Business
R029180	B-Business

The zoning allows single family residential, as well as multi-family use, subject to the subdivision process allowed by the Town of Fraser. Proposed density is subject to many things including setbacks. The presence of Elk Creek on the property changes setback and open space requirements. Further, the presence of wetlands on the property affects the setback requirements. The former Safeway Shopping Center is located at the rear of the property, and railroad tracks run along the west side of the subject properties.

7. Mr. Stephen Meyer testified that a price per developable unit, per net buildable square foot or per developable cubic foot, etc. should be used to value the subject properties, rather than a price per square foot basis.

8. Mr. Stephen Meyer testified that differences in allowable density and building regulations can be accounted for by comparing the price per developable unit, price per buildable acre and price per buildable square foot. Mr. Meyer presented a value of \$5,467.00 per unit and \$5.86 per buildable square foot. Buildings are three-dimensional and should be valued by cubic foot of developable space per acre. He presented a value of 11¢ per buildable cubic foot.

9. Under cross-examination, Mr. Stephen Meyer testified that he could use Respondent's comparable sales, but that they require adjustments for dissimilarities. Respondent presented the towns of Winter Park and Fraser as equal, but Mr. Meyer believes they are different housing markets. The differences show up in sales tax revenue. The town of Fraser has no value as an address compared to Winter Park.

10. Upon further questioning, Mr. Meyer testified that he believes streams are an

amenity, but that the subject properties have offsetting negative features as well. For example, the former Safeway Shopping Center is located at the rear of the property, railroad tracks run along one side of the properties, and the difficulties involved with the wetland restrictions. An example of an additional cost to develop the subject properties is the removal of the clay soil that must be replaced with structural material approximately 1.0 to 1.5 feet deep.

11. Based on Petitioner's above-described approaches to value, the indicated values of the subject properties are as follows:

Docket No. 40363/Schedule No. R029170	\$128,175.00
Docket No. 40364/Schedule No. R029114	\$253,930.00
Docket No. 40365/Schedule No. R029180	\$ 50,000.00
Docket No. 40366/Schedule No. R029150	\$100,000.00 - \$135,000.00
Docket No. 40367/Schedule No. R029160	\$ 85,600.00

Petitioners also presented 10 comparable sales ranging in sales price from \$150,000.00 to \$1,292,500.00 and in size from .7 to 16.5 acres. After adjustments were made, the sales ranged from \$165,300.00 to \$1,344,200.00.

12. Mr. Meyer testified that Petitioners' comparable sale 10, the Waterside sale, is closest to the subject property and shares similar characteristics. Purchased for \$850,000.00 in 1999, the Waterside property has 16.5 acres with some commercial zoning and many wetlands. Approximately one-third of the property can be developed, and it was platted for condominiums and duplexes. Petitioners' comparable sale #8, the Dimmit sale, is relevant to the subject, but requires adjustments for differences including its location in Winter Park, density, open space requirements and allowable building height. The site is long compared to its width and is adjacent to a railroad track. It was not purchased for commercial use and zoning had no impact on value. The subject property zoning allows 20 units per acre, whereas the Dimmit property zoning allows 28 units per acre.

13. Petitioners did not present a cost approach or income approach to value.

14. Petitioners' witness, Ms. Lisa Ashbach, testified that she contracted to purchase the Waterside property in January 1999 and closed in May 1999. The purchase price was \$850,000.00 for 16.5 acres. She testified that sloping sites have better views, but require more work. Her property has steep portions that are difficult to build on, so she built on more level sections of the site. She believes her property is worth \$10,000.00 less per unit than properties in Winter Park. She markets the Waterside project with a Winter Park address.

15. Under cross-examination, Ms. Ashbach testified that she spent \$450,000.00 (\$90,000.00 per acre) for infrastructure and \$50,000.00 per acre for grading. She believes wetlands complicate the process.

16. Petitioners are requesting the following 2002 actual values for the subject property:

Docket No. 40363/Schedule No. R029170	\$128,175.00
Docket No. 40364/Schedule No. R029114	\$253,930.00
Docket No. 40365/Schedule No. R029180	\$ 50,000.00
Docket No. 40366/Schedule No. R029150	\$100,000.00 - \$135,000.00
Docket No. 40367/Schedule No. R029160	\$ 85,600.00

17. Respondent's witness, Mr. Brian Reynolds, a Registered Appraiser with the Grand County Assessor's Office, presented the following indicators of value for the subject properties based on the market approach:

<u>Docket No.</u>	<u>Schedule No.</u>	<u>Value per SF</u>	<u>2002 Value</u>
40363	R029170	\$3.50	\$336,760.00
40364	R029114	\$3.24	\$593,040.00
40365	R029180	\$3.24	\$115,780.00
40366	R029150	\$3.24	\$296,520.00
40367	R029160	\$3.65	\$179,500.00

18. Respondent's witness presented seven comparable sales ranging in sales price from \$150,000.00 to \$1,292,500.00 and in size from 0.7 acres to 8.78 acres. After adjustments were made, the sales ranged from \$165,300.00 to \$1,344,200.00.

19. Mr. Reynolds testified that there were no sales available showing the impact of wetlands. To compensate, he took the conservative end of the value range. He started at \$3.75 per square foot and made a downward adjustment for wetlands, and an upward adjustment for the water feature. He felt the subject properties had typical Fraser views and he did not have any market data to adjust for the influence of the railroad tracks. After adjustment, the sales ranged from \$3.51 to \$8.92 per square foot (\$153,098.00 to \$388,684.00 per acre); he reconciled to \$3.75 per square foot.

20. Mr. Reynolds testified that he gave weight to all of the comparable sales, as each sale has something similar to the subject properties. Sale 1 lacks specific positive or negative features; there is nothing that is a problem or an advantage existing with this property. Sale 2 has an exceptional view, and sale 3 is a typical tract. Sale 4 was platted at the time of sale and sale 5 is located in the heart of Winter Park that allows higher density.

21. Mr. Reynolds testified that he did not use the Waterside sale used by the Petitioners. It was not on his list of good sales at that time. Now that he has looked at the data, he feels the price per square foot is outside the norm.

22. Mr. Reynolds testified that he researched individual properties adjacent to a creek or water feature. He found a range of value between \$170,000.00 to \$230,000.00 per acre and applied an adjustment. Three of the subject parcels have a water feature.

23. Mr. Reynolds testified that he concluded multi-family residential development was appropriate and that Elk Creek would be a positive feature. He recognizes several areas of wetlands on the subject properties. Mr. Reynolds testified that culverts could be installed to offset some of the wetlands issues, and overall, wetlands are a positive feature. He believes a creek alone can get another 250% increase in value. The wetlands can also contribute to meeting open space requirements.

24. Mr. Reynolds testified that he considered fill issues, but does not see the significance in bringing fill in to divert water. Drainage is a big issue for all property in the area due to over 100 inches of snow per year. Some of the wetlands issues with the subject properties can be minimized with an easement agreement with the other parcels. However, the fact that Elk Creek dissects the subject property is a different issue and would limit the building envelope.

25. Mr. Reynolds testified that Winter Park commands a premium price when compared to Fraser. Within the town of Fraser, sites with views of Byers Peak sell for more, as buyers seek out lots with views and lots overlooking the valley. The subject parcels could be developed to provide good views of Byers Peak.

26. Mr. Jeff Durbin, the Community Development Director for the Town of Fraser, testified that it costs more to build property in Winter Park versus Fraser due to numerous fees. These fees include sales and use taxes, low-income housing fees and real estate transfer fees.

27. Mr. Durbin testified that he is concerned with the wetlands issues affecting the subject property, but that development would not be any more difficult than anywhere else in the area. The Army Corps of Engineers is consistent throughout the community. Wetlands and open space add more value to a community than a golf course. He has knowledge of the property across the street from the subject that has wetland issues. It went through the subdivision process and is ready to be developed.

28. Mr. Durbin testified that the subject properties do not need fill material, although it is easy to think so at first glance. He anticipated drainage would be channeled into detention ponds that flow into the wetlands and/or into Elk Creek.

29. Under cross-examination, Mr. Durbin testified that structural fill would be necessary for construction of the buildings, but that there was no need to raise the level of the entire property. He explained that the open space requirement depends on use, not zoning, and that the wetlands have a greater impact on a commercial development. A wetlands permit was issued for the entire assemblage.

30. Upon redirect, Mr. Durbin testified that the stream on the subject property is an amenity. If the parcels were sold separately, the setback and open space requirements would have to be met for each individual parcel; therefore, it is logical for the parcels to be treated as an assemblage.

31. Respondent's witness did not present a cost approach or income approach to value.

32. Respondent assigned the following actual values to the subject properties for tax year 2002:

Docket #40363 - Schedule #R029170	\$336,760.00
Docket #40364 - Schedule #R029114	\$593,040.00
Docket #40365 - Schedule #R029180	\$115,780.00
Docket #40366 - Schedule #R029150	\$296,520.00
Docket #40367 - Schedule #R029160	\$179,500.00

CONCLUSIONS:

1. Petitioners presented sufficient probative evidence and testimony to prove that the valuation of the subject properties for tax year 2002 was incorrect.

2. The Board is not convinced that the existence of wetlands precludes development of the subject properties. The Board is convinced that the subject properties can be developed, and need to be treated as an assemblage to best utilize the parcels and meet wetlands mitigation requirements. The Board heard testimony from Petitioners that the subject properties are adversely impacted by Elk Creek and wetlands restrictions and requirements. The Board agrees that these factors impact the subject properties' potential development and marketability. Further, the Board agrees that, due to the percentage of wetlands on the subject properties, fill material will be required in order to fully develop the site. However, the Board was not convinced that the entire site would require substantial fill material. The Board was not given adequate data to determine a cost to cure.

3. The Board believes that the negative impact of Elk Creek dissecting the site is offset to some extent by an increase in value due to the existence of the creek. The value premium in a finished product is a partial trade-off for the restrictions caused by the creek, wetlands and increased costs of development. Additionally, the wetlands can be utilized to fill the open space requirement.

4. The Board understands that there are a lack of sales affected by wetlands, and recognizes the challenges involved in performing an accurate market approach to value when wetlands are involved. The Board feels the best way to value the subject properties is the price per square foot method. This method is standard appraisal practice for development land. The Board believes the wetlands issues affect the subject properties, but was not persuaded that the impact was so great as to cause a significant decrease in value. The nature of mountain properties in general often requires substantial site preparation work due to steep slopes, rocks, water, etcetera. The Board believes the site preparation work needed on the subject properties could be slightly more than what is usually required to develop other mountain properties.

5. The Petitioners presented ten comparable sales and the Respondent's witness presented seven sales. Seven of the ten sales used by Petitioners were common to sales presented by the Respondent. The Respondent's assigned value does not take into consideration all the factors affecting the overall valuation. Respondent's seven sales included sales in Winter Park. The Board is not convinced that Winter Park properties are similar to properties in Fraser, and believes that they require a location adjustment. The Board adjusted the sales in Winter Park for location. The Board was ultimately persuaded that sales 2, 5, 7 and 8 best reflect the value of the subject properties.

6. The Board believes location and site size are the important issues and agrees that the subject properties have an unusual amount of wetlands. The Board adjusted the subject properties' values according to their individual characteristics and degree of impact by wetlands, setback issues, corner locations, access, and utility service availability.

7. After careful consideration of all the testimony and evidence presented, the Board determined the subject properties' values should be reduced as follows:

<u>Docket No.</u>	<u>Schedule No.</u>	<u>Value per SF</u>	<u>Total Value</u>
40363	R029170	\$3.00	\$228,804.00
40364	R029114	\$1.80	\$329,314.00
40365	R029180	\$2.75	\$ 98,227.00
40366	R029150	\$2.75	\$250,602.00
40367	R029160	\$3.00	\$147,669.00

ORDER:

Respondent is ordered to reduce the 2002 actual value of the subject properties as follows:

Docket #40363 - Schedule #R029170	\$228,804.00
Docket #40364 - Schedule #R029114	\$329,314.00
Docket #40365 - Schedule #R029180	\$ 98,227.00
Docket #40366 - Schedule #R029150	\$250,602.00
Docket #40367 - Schedule #R029160	\$147,669.00

The Grand County Assessor is directed to change his records accordingly.

APPEAL:

Petitioners 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 21st day of October, 2003.

BOARD OF ASSESSMENT APPEALS

Rebecca Hawkins

Rebecca Hawkins

Karen E Hart

Karen E. Hart

This decision was put on the record

OCT 21 2003

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

Penny S. Lowenthal
Penny S. Lowenthal

