

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>TOMAR DEVELOPMENT, INC.</p> <p>v.</p> <p>Respondent:</p> <p>CHAFFEE COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Thomas H. Smith Tomar Development Company</p> <p>Address: 1701 E. 147th Street Kansas City, Missouri 64146</p> <p>Phone Number: (816) 331-0435</p>	<p>Docket Number: 41429</p>
<p style="text-align: center;">ORDER (On Retaining Jurisdiction)</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 19, 2004, Diane M. DeVries and Steffen A. Brown presiding. Petitioner was represented by the owner of the corporation, Mr. Thomas H. Smith. Respondent was represented by Jennifer A. Davis, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Lots 1, 2 and 4 – 63 Weldon Creek Subdivision
(Chaffee County Schedule No. 368535100170 + 63)**

Petitioner is protesting the 2003 actual value and classification of the subject property consisting of approximately 1,300 acres of land.

ISSUES:

Petitioner:

Petitioner contends that the subject property, purchased in 1999, has been used for grazing since 1949 and should be classified as agricultural land. Approximately 81% of the property is in a conservation easement. There are cattle leases but grazing over the past three years has been difficult due to the drought.

Respondent:

Respondent contends that there were no cattle on the property in 2001, 2002 or on January 1, 2003 and that the subject has been correctly valued and classified as vacant land.

FINDINGS OF FACT:

1. Mr. Thomas H. Smith, Petitioner and owner of the subject property, presented the appeal on behalf of Tomar Development.

2. Petitioner's witness, Ms. Karin Adams of United Country Premier Brokers, presented the following exhibits:

Exhibit A: A history of the subject property from the time Mr. Carl Gene Koontz acquired the land in 1959 to the sale to Mr. Thomas H. Smith

Exhibit B: U.S.G.S. map outlining the subject property.

Exhibit C: A survey reflecting the total 1,325.32 acres.

Exhibit D: A history of ownership and use of the property, the Conservation Easement Deed that dedicates 81% of the subject property and the Protective Covenants for Weldon Creek.

Exhibit E: Grazing leases.

Exhibit F: Chaffee County Assessor's Property Profiles.

Exhibit G: Photographs of the subject property.

3. Ms. Adams testified that Petitioner continuously used the subject land for grazing cattle. Petitioner has maintained active grazing and pasture leases on the subject property while developing the land into a residential subdivision with 63 home sites. None of the lots have been fenced separately nor have any buildings been constructed on the property. From March 1999 to June 2002, the subject was continuously leased for cattle grazing with the Lake and Kaess Ranches.

The Kaess Ranch took over the Lake operation when the Lakes moved. From March 1999 to June 2002, Mr. Smith was working with contractors to develop the subject property. In May 2002, he executed a conservation easement with Chaffee County. From June 2002 to present, numerous parties have leased the subject property for grazing.

4. In cross-examination, Ms. Adams testified that she is a Real Estate Broker. She has been associated with Mr. Smith since 1999. Ms. Adams markets the individual sites but only gets paid upon the sale of a parcel of land. Ms. Adams testified that the incentive for obtaining the Conservation Easement Deed was not for agricultural status, but for open space as outlined in Petitioner's Exhibit D. Ms. Adams testified that she has seen cattle on the subject property at various times and believes they were from the Lake Ranch and the Kaess Ranch.

5. Mr. Smith testified that the majority of the subdivision construction work was performed in 2001. The development has approximately nine miles of roads with entries off Highways 50 and 140. He did not receive any cash compensation for the grazing leases during the years 2001, 2002, or 2003. His compensation was work that he assumes was performed on the property by the lessees. There have been only three tenants during his ownership: Mr. Heiser, the Kaess Ranch and the Lakes. The subject property was fenced when he purchased it in 1999 and those same fences remained during 2001 and 2002, with some repairs and replacements. Mr. Smith testified that the 2002 drought adversely affected the property but he does not know to what extent. The water source for cattle on his property is the Hoosier Ditch, Weldon Creek and some ponds. He did not know if there was water in the Hoosier Ditch in 2002.

6. Petitioner's witness, Mr. Tim Heiser, a Realtor with United Country Premier Brokers, testified that he has raised cattle all of his life. Various people, including the contractor, complained about the roaming cattle and the fences in disrepair throughout the construction; but the cattle remained on the property. The Lakes complained about the fences and said they were going to move their cattle. The Kaesses wanted to take over the grazing from the Lakes as they had a grazing allotment above the subject property and their cattle stayed there most of the time anyway. The cattle did not graze the property continuously all year, but mostly during the spring and fall months, a couple of months at a time.

7. In cross-examination, Mr. Heiser testified that the gate and road construction took about two years, from 2001 to the fall of 2002, which is when they received the complaints about the roaming cattle. He did nothing about the complaints while the roads were being constructed. He testified that cattle were on the property in May and June 2002, but were pulled off in July due to the drought. Mr. Heiser and Mr. Chick own Weldon Creek LLC. The LLC was formed to receive compensation from Mr. Smith for their help with the development of the subject property.

8. Petitioner's witness, Mr. Richard Chick, a Realtor with Country Premier Brokers, testified that he was not involved with the subject property in 2002. He did not become involved with the subject property until 2003. He made two trips to the subject property with county assessor personnel. They did not find any cattle on the property during the first inspection, but there was evidence that cattle had been there. They located cattle on the second inspection and took the photographs labeled Petitioner's Exhibit G. He testified that the adjoining Leonard Ranch was classified as agricultural property during its development and he does not understand why there is a

difference between its classification and the subject property.

9. Petitioner is requesting a 2003 agricultural land classification.

10. Respondent's witness, Mr. Dean Russell, a Registered Appraiser with the Chaffee County Assessor's Office, presented an indicated value of \$9,155,503.00 for the subject property based on the market approach.

11. Respondent's witness presented three comparable sales ranging in sales price from \$705,000.00 to \$1,160,000.00 and in size from 85.05 acres to 290 acres or \$4,000.00 to \$12,604.00 per acre. After adjustments were made, the sales ranged from \$5,222.00 to \$17,513.00 per acre.

12. Mr. Russell concluded to a value of \$6,000.00 per acre plus \$1,900,000.00 in infrastructure development. Mr. Russell derived the infrastructure development costs from Vacant/Subdivision Land questionnaires as shown on page 17 of Respondent's Exhibit 1. Respondent's present worth discount analysis is described on pages 18, 20 and 21 of Respondent's Exhibit 1.

13. Mr. Russell testified that the subject property is comprised of 1,312 acres divided into 63 lots ranging in size from 10.10 acres to 51.78 acres. The conservation easement affects approximately 80% of the subject property, places restrictions on building and keeps it as open space, which he believes adds value to the land.

14. Mr. Russell inspected the subject property in 2002 when the roads and phone lines were being installed. He testified that he saw no evidence of cattle in the areas he inspected in 2002, which included all of the roadways and one pond. There was a perimeter fence but it was not in very good shape, particularly along the highway and the north end, around Parcel 114, adjacent to Forest Service Property. In his opinion, the fence would not have held cattle; only the bottom barbed wire strand was somewhat intact. He inspected the property again a couple of months later when the road was more complete and did not notice any improvement in the fencing and did not see any cattle. During a subsequent inspection in the spring of 2003, he observed improvement in the fencing along Highway 50 but he did not inspect the entire subdivision.

15. Respondent's witness, Mr. Joe A. Lionelle, testified that he purchased 40 acres adjacent to the subject property off Highway 50 approximately four years ago and lives on his property. He observed heavy road equipment in 2001 at the subject property working almost every day. A portion of the subject property did not have any fencing, just the old fence along the road. A section of the fencing was taken down due to their building the roads. The fences along his side of the property were not capable of containing cattle. He is not familiar with the north end of the subject property but is familiar with the balance of the subdivision. He did not see any cattle on the property during 2001. He was on the subject property in the spring of the year, April/May of 2001, with his cousin who did maintenance work on the Hoosier Ditch, but did not see any cattle or evidence of cattle. He did not see cattle during the spring of 2002 and a lot of the fencing was down. The only cattle he saw were owned by the adjoining property owner, Karen Kaess, which had gotten loose from the forest grazing lease area and were out for about a week. Mr. Lionelle testified that he did not see water in the Hoosier Ditch that runs through his and the subject property during 2002.

The ditch on the subject property was removed while they operated a gravel pit and was subsequently replaced, he believes, in the spring of 2003.

16. Respondent's witness, Mr. Rick Roberts, a Licensed Appraiser with the Chaffee County Assessor's Office, testified that he visited the subject property in 1999 and saw a herd of elk but no cattle. He was hunting on BLM land near the subject property in November 2000 and saw signs of an old fence on the north side and west side of the property, but there were no cattle. He inspected the property in August 2001. The entry gate on County Road 140 was a construction barricade; there were no fences to keep cattle off the road. He drove as many of the roads as possible, close to 10 miles, and did not see any fence lines or cattle, and no cattle around a pond. He was at the property again in December of 2001 and there was still no gate on the structures; you could drive right through. He was on the property in June 2002 and saw no sign of cattle and there was no water in the Hoosier Ditch or in the ponds. He returned in July and August of 2002 to get firewood and did not see any cattle on the property, which was near the vicinity of Parcel 160 or Parcel 161 at the lower end and Parcel 137 at the far northwest end of the property. He was next at the property in late September or early October of 2003 when he went with the fire department to test the gates; there was no sign of cattle.

17. During rebuttal, Mr. Tim Heiser testified that he had spent five years on the subject property going from border to border. Mr. Heiser indicated that you cannot see 3% of the fencing from any part of the paved drives. The Colorado Department of Transportation (CDOT) maintains the front fences. A hot wire fence, which is difficult to see, was installed on the subject property bordering the Lionelle property to keep the cattle off of his property. He did not fix the fences in 2002 but they were fixed around late August 2003. He testified that the fences were in good condition on the BLM area on the west and that the north fences were in poor condition due to the elk. They only maintain those fences when they are getting ready to put in cattle due to the frequent damage caused by the elk herd. He explained that during dry years, Weldon Creek runs in April, May and June, after which the trees take up the water and it remains dry until September or October, when it runs again for a couple of months before freezing up. He personally ran cattle on the subject property in 2003.

18. Mr. Richard Chick testified during rebuttal that none of Respondent's three sales are cattle operations, so they are not comparable to the subject. The Leonard Ranch, which is adjacent to the subject property, was developed into 15 parcels that are currently classified as agricultural and are operating in the exact same fashion as the subject property, which he believes is being singled out.

19. Respondent assigned an actual value of \$9,206,576.00 to the subject property for tax year 2003, but is presenting a lower value of \$9,155,503.00.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly classified and valued for tax year 2003.

2. Conflicting evidence and testimony was presented during this hearing. Respondent's witnesses testified that they observed the subject property at various times but mainly from the paved roads, and saw no signs of cattle, cattle waste or cattle tracks. However, due to the large amount of acreage involved, the Board was not persuaded that a sufficient percentage of the 1,300 acres was inspected during the appropriate months of the year.

3. Based on Petitioner's evidence and testimony, the Board was convinced that the subject property was used for grazing. The Board agrees that the ongoing drought caused grazing to be more sporadic. Although grazing was not continuous, the Board was convinced that cattle were on the subject property at various times during the period in dispute. The Board placed considerable weight on the testimony of Mr. Tim Heiser who observed cattle on the subject property from 2001 through 2003 while traversing it from border to border on foot, by horseback and by 4-wheel drive vehicle.

4. There is no dispute that Petitioner intends to develop the subject property. However, platting a property for subdivision does not disqualify it from an agricultural classification. The Board believes that the subject property was used for grazing purposes during the development, platting, and subdivision stages and grazing leases were in effect.

5. After careful consideration of all of the evidence and testimony presented, the Board concluded that the subject property meets the statutory definition of agricultural grazing land.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property based on an agricultural classification.

The Board retains jurisdiction in this matter for two weeks from the date of this decision, by which time the Respondent must notify the Board in writing as to the adjusted value of the subject property for tax year 2003. The Board will then issue a final order based on the adjusted value.

DATED and MAILED this 9th day of September 2004.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries
Diane M. DeVries

Steffen A. Brown
Steffen A. Brown

This decision was put on the record

SEP 09 2004

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



BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
Petitioner: TOMAR DEVELOPMENT, INC., v. Respondent: CHAFFEE COUNTY BOARD OF EQUALIZATION.	
Attorney or Party Without Attorney for the Petitioner: Name: Thomas H. Smith Tomar Development, Inc. Address: 1701 E. 147 th Street Kansas City, Missouri 64146 Phone Number: (816) 331-0435	Docket Number: 41429
FINAL ORDER (On Retaining Jurisdiction)	

THE BOARD OF ASSESSMENT APPEALS retained jurisdiction in this matter until September 23, 2004, at which time the Respondent was to notify the Board in writing of the 2003 actual valuation of the subject property based on an agricultural classification.

FINDINGS OF FACT:

1. On September 23, 2004 the Board received Respondent's adjusted value for the subject property.
2. The adjusted value of the subject property is indicated on the attached Exhibit A.

ORDER:

Respondent is ordered to change the classification of the subject property to agricultural and to reduce the actual value of the subject property to \$475,713.00 for tax year 2003. (Reference attached Exhibit A.)

The Chaffee County Assessor is directed to change his/her records accordingly.

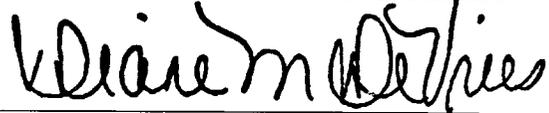
APPEAL:

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 29th day of September 2004.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries



Steffen A. Brown

This decision was put on the record

SEP 28 2004

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

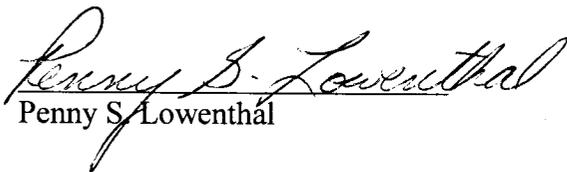

Penny S. Lowenthal

Exhibit A

Schedule No.	Acres	Price/Acre	Ag. Value (Rounded)
R368426200105	20.05	\$372.60	\$7,471
R368526200106	18.44	\$372.60	\$6,871
R368526200107	20.46	\$372.60	\$7,623
R368526200108	10.1	\$372.60	\$3,763
R368526200109	22.96	\$372.60	\$8,555
R368526200110	16.55	\$372.60	\$6,167
R368526200111	13.6	\$372.60	\$5,067
R368526200112	15.8	\$372.60	\$5,887
R368526200113	10.15	\$372.60	\$3,782
R368526200114	12.95	\$372.60	\$4,825
R368526300115	12.01	\$372.60	\$4,475
R368526300116	11.98	\$372.60	\$4,464
R368526300117	13.55	\$372.60	\$5,049
R368526300118	11.2	\$372.60	\$4,173
R368526300119	10.67	\$372.60	\$3,976
R368526300120	14.03	\$372.60	\$5,228
R368526300121	14.67	\$372.60	\$5,466
R368526300122	35.07	\$372.60	\$13,067
R368526300123	13.64	\$372.60	\$5,082
R368526300124	16.96	\$372.60	\$6,319
R368526300125	16.25	\$372.60	\$6,055
R368526400126	16.88	\$372.60	\$6,289
R368526400127	20.8	\$372.60	\$7,750
R368526400128	14.99	\$372.60	\$5,585
R368526400129	10.37	\$372.60	\$3,864
R368526400130	17.77	\$372.60	\$6,621
R368526400131	14.42	\$372.60	\$5,373
R368526400132	11.08	\$372.60	\$4,128
R368526400133	11.56	\$372.60	\$4,307
R368526400134	13.13	\$372.60	\$4,892
R368526400135	10.56	\$372.60	\$3,935
R368526400136	4.28	\$372.60	\$1,595
R368527100137	10.8	\$372.60	\$4,024
R368527100138	21.65	\$372.60	\$8,067
R368527100139	35.2	\$372.60	\$13,116
R368527100140	35.2	\$372.60	\$13,116
R368527100141	35.63	\$372.60	\$13,276
R368527100142	22.3	\$372.60	\$8,309
R368534400143	37.63	\$372.60	\$14,021
R368534400144	44.72	\$372.60	\$16,663
R368535100145	7	\$372.60	\$2,608
R368535100146	26.23	\$372.60	\$9,773
R368535100147	39.88	\$372.60	\$14,859
R368535100169	23.35	\$372.60	\$8,700
R368535100170	2.69	\$372.60	\$1,002
R368535200148	36.38	\$372.60	\$13,555
R368535200149	35.37	\$372.60	\$13,179
R368535300150	39.32	\$372.60	\$14,651

R368535300151	35.26	\$372.60	\$13,138
R368536200153	28.66	\$372.60	\$10,679
R368536200154	16.44	\$372.60	\$6,126
R368536200155	11.23	\$372.60	\$4,184
R368536200156	10.1	\$372.60	\$3,763
R368536200157	13.52	\$372.60	\$5,038
R368536200158	10.23	\$372.60	\$3,812
R368536200159	10.1	\$372.60	\$3,763
R368536200160	12.94	\$372.60	\$4,821
R368536200161	18.03	\$372.60	\$6,718
R368536300162	12.4	\$372.60	\$4,620
R368536300163	25.43	\$372.60	\$9,475
R368536300164	16.11	\$372.60	\$6,003
R368536400166	37.96	\$372.60	\$14,144
R368536300165	51.78	\$372.60	\$19,293
R368536400167	36.27	\$372.60	\$13,514
TOTAL	1276.74		\$475,713