

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MYLA J. PEARCE AS PERSONAL REPRESENTATIVE OF THE ESTATE OF THOMAS G. PEARCE,</p> <p>v.</p> <p>Respondent:</p> <p>HUERFANO COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: John R. Torbet, Esq. Address: 320 East Costilla Colorado Springs, Colorado 80903-2121 Phone Number: (719) 471-9300 E-mail: JRTorbet@aol.com Attorney Reg. No.: 958</p>	<p>Docket Number: 42203</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 26, 2004, Karen E. Hart and Diane M. DeVries presiding. Petitioner was represented by John R. Torbet, Esq. Respondent was represented by Garrett Sheldon, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**32 vacant lots in the Huajatolla Hills Subdivision, Walsenburg, Colorado
(Huerfano County Schedule Numbers 10751, 10764, 10770, 10769, 10768,**

10767, 10765, 10766, 10776, 10772, 10788, 10779, 10791, 10792, 10793, 10797, 10795, 10780, 10781, 10782, 10789, 10790, 10794, 10784, 10783, 10785, 10777, 10778, 10771, 10773, 10775, and 10774)

Petitioner is protesting the 2003 actual value of the subject property consisting of 32 vacant land parcels that are each less than one-half acre in size.

ISSUES:

Petitioner:

Petitioner contends that the subject lots are valueless as residential lots since lots that are less than one-half acre in size cannot obtain an individual sewer disposal system (ISDS) permit. Without a sewer permit, the purchaser is unable to obtain a building permit. The subject lots are not connected to the Town of Walsenburg's sewer system and connecting to city sewer does not appear to be a viable solution. The State of Colorado's Department of Health issued guidelines to the local health departments that they were required to adopt procedures and guidelines when issuing ISDS permits for lots in subdivisions. Huerfano County Health Department adopted procedures and guidelines requiring that each lot must be at least one-half acre to obtain an ISDS permit.

Petitioner's Exhibit 5 is a letter to the Petitioner from the City of Walsenburg dated December 19, 2001 stating that the City of Walsenburg is refusing to give permits for septic systems in the Huajatolla Hills Subdivision because of insufficient lot area to allow build out of leach fields.

One possible cure is to replat the subject development into larger than one-half acre lots. This effectively would lose 14 of the 32 lots.

Respondent:

Respondent stated that there is not much in dispute in this case. The lots can be sold and the Respondent feels that the subject lots could be sold in two-lot parcels. The Respondent believes that they have given allowances for costs to cure and percentage of lots sold. The subject property is not zoned agricultural and is not considered to be of agricultural use.

The Respondent believes that the Petitioner would not lose lot sales but would double the size of the lot, therefore increasing the price per lot.

FINDINGS OF FACT:

1. Petitioner's witness, Myla J. Pearce, personal representative of Thomas G. Pearce, is the only heir. Ms. Pearce has been Mr. Pearce's personal representative since his death on August 16, 2002.

2. Ms. Pearce testified that the subject property is located on the north corridor of the City of Walsenburg. Her husband acquired the subject property in 1972 and in 1994 proceeded with development of single-family residential lots. The plat started with over 54 lots. There are 38 lots available as of the assessment date, with 32 of these lots less than one-half acre in size.

3. Ms. Pearce testified that the letter she received from the City of Walsenburg in December 2001 stating that they would no longer be issuing ISDS permits for lots under one-half acre came as a complete surprise. Since that time, she has not sold any lots under one-half acre.

4. Ms. Pearce testified that she has discussed various options with the City of Walsenburg and with the Northland Improvement District in an attempt to get the subject property attached to city sewer. It would be cost prohibitive to bring city sewer that far out of the City of Walsenburg.

5. Ms. Pearce testified that due to the health department's requirement that no ISDS permit will be issued to lots less than one-half acre in size, any purchaser would be unable to obtain a building permit.

6. Ms. Pearce testified that roads, water lines and water hydrants are already in place. She has had discussions with the City to replat the subject property. In doing this she would lose 14 lots of the remaining 38 lots, leaving potentially 24 lots to sell. She stated that this would cause a cost to cure of about \$140,000.00.

7. Ms. Pearce testified that at this time the subject lots are not marketable. She testified that a proposed replat would be the most efficient use of the available property.

8. Under cross-examination, Ms. Pearce testified that the City of Walsenburg refuses to put a sewer line out to the subject property. The property is located within the city limits of Walsenburg and receives police and fire protection, and water service from the city.

9. Under cross-examination, Ms. Pearce testified from Respondent's Exhibit A, page 19, that lots over one-half acre have sold for up to \$20,000.00 per acre. It is possible to sell the subject lots if replatted; however, this is a slow development.

10. The Petitioner believes that the 2003 actual value of the subject lots should be \$108,704.00.

11. Respondent's witness, Mike Medina, a Licensed Appraiser with the Huerfano County Assessor's Office, testified that he prepared Respondent's Exhibit A in preparation for this hearing.

12. Mr. Medina testified that he used \$10,000.00 per lot before subdivision discounting and the allowance for cost to cure. All of the sales used are in Respondent's Exhibit A, page 19. Rating sales high to low, the median sale price is \$10,000.00. These sales occurred from 1995 through 2001.

13. Mr. Medina testified that he used the present worth discounting method in valuing the subject lots. He used an adjusted sales price of \$10,000.00 per lot, a four-year sell out period, an 11% composite discount rate and allowed a \$970.00 cost to cure spread out over 32 lots. The present worth value of each lot is \$7,773.00 or \$248,736.00.

14. Mr. Medina testified that usually a larger lot sells for a smaller per-acre value. The smaller lots usually sell for a larger per-acre value.

15. Under cross-examination, Mr. Medina testified that he used the information provided by the Petitioner for his cost to cure adjustment. The Petitioner provided Respondent's Exhibit A, pages 12 and 13, an itemized bill for a draft of replat of the subject property of \$970.00.

16. Under cross-examination, Mr. Medina testified that if there were a loss of 14 lots for sale it would be a cost to cure.

17. On questions from the Board, Mr. Medina testified that the non-liquidity rate from the Division of Property Taxation is zero. He testified that five or six houses are in the subject subdivision.

Respondent assigned an actual value of \$7,772 per lot, or \$248,704.00 to the subject property for tax year 2003.

18. Ms. Pearce, as a rebuttal witness, testified that she wished she knew when and how this situation was going to be resolved. She stated a survey would cost about \$2,500.00. She does not know what the replatting costs will be with the City of Walsenburg. Everything is speculative.

19. Ms. Pearce testified that the pricing of the lots depends on their location. The sold lots located on a hillside have an incredible view of the Sangre de Cristo mountain range. The remaining lots some have views and trees but are pretty plain and she is asking \$12,000.00 per acre. Sand lots with no trees at .359 acres are priced at \$5,000.00 per lot. None have sold.

20. Ms. Pearce testified that an agriculture classification is not an issue since the subdivision is not used or leased to anyone for agricultural purposes.

21. On questions from the Board, the parties agreed that an agricultural classification is not at issue.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2003 valuation of the subject property was incorrect.

2. The Board determined that the subject lots remaining in the Huajatolla Hills Subdivision should be valued using the present worth method. The Board agrees with the parties that an agricultural classification is not at issue.

3. The Board was convinced that the remaining lots could not obtain an ISDS permit or a building permit. The Petitioner is going to have to expend substantial funds to replat the subject subdivision in order for the remaining 32 lots under one-half acre in size to be saleable. The full amount of funds necessary to make the subject lots saleable is not known. The Board determined that the subject lots should be valued using the lower end of the sales range of lots less than one-half acre in size, as shown in Respondent's Exhibit A, page 19, to account for the unknown costs to cure.

4. In using the present worth method, the Board determined that the adjusted full market sales price of a lot or tract should be \$6,000.00. The Board agrees with Respondent's four-year sellout period and the composite discount rate calculation of 11%. Utilizing a full market value per lot of \$6,000.00 divided by a four-year sellout, using a 3.102446 factor derives a discounted value of \$4,654.00 per lot, or a 2003 actual value of the subject 32 lots of \$148,928.00.

5. The Board concluded that the 2003 actual value of the subject property should be reduced to \$148,928.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$148,928.00.

The Huerfano 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 28th day of June, 2004.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Diane M DeVries
Diane M. DeVries

This decision was put on the record

JUN 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
Penny S. Lowenthal

