

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>EL DAVIS TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>ELBERT COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Harold F. Hurst, Esq. Address: P.O. Box 445 Elizabeth, Colorado 80107 Phone Number: (303) 646-1040 Attorney Reg. No.: 2823</p>	<p>Docket Numbers: 42459 and 42460</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 27, 2004, Rebecca Hawkins and Judee Nuechter presiding. Petitioner was represented by Harold F. Hurst, Esq. Respondent was represented by Mark Scheffel, Esq.

PROPERTY DESCRIPTION:

The subject properties are described as follows:

Elbert County Schedule Nos. 104902, 104903, 104905, 104914, 104916 and 104917

Petitioner is protesting the 2003 actual value of the subject properties: a 35-acre residential property located at 40999 Way of Patience, Deer Trail, Colorado (Docket No. 42459, Schedule No. 104917) and five parcels classified as agricultural (Docket No. 42460, Schedule Nos. 104902, 104903, 104905, 104914, and 104916. Docket 42459 and Docket 42460 were consolidated for the purpose of this hearing.

ISSUES:

Petitioner:

Petitioner contends that the subject properties have been valued based on the market approach. The five agricultural lots are landlocked, which diminishes their market value. The residential lot is not landlocked. The Respondent has assessed excessive production rates for grazing, which is the current use of the vacant lots.

Respondent:

Respondent contends that the subject properties have been valued correctly based on the market and income approaches to value, as applicable.

FINDINGS OF FACT:

1. The subject properties consist of six lots in Chaparral Valley Subdivision; one improved lot and five vacant lots. Each lot consists of 35 acres more or less of grazing land with good views of Pikes Peak. The residential site has a wood frame ranch style dwelling on a 35-acre tract. There are two outbuildings on this parcel, which include a 1,600 square foot airplane hangar and a nine square foot privy. Respondent assigned a value of \$3,064.00 per acre for the residential tract and \$17.46 per acre for each of the five vacant lots.

2. Mr. Earl A. Davis, Trustee of the El Davis Trust, testified that the property consists of Lots 20, 21, 22, 24, and 29 of the Chaparral Valley Subdivision. The improvement on Lot 20 is his personal residence. Respondent has assessed each lot separately.

3. The Petitioner's witness testified that the five lots are undeveloped, fenced and are used to graze cattle. They have been leased to Ralph Johnson and his son for approximately 22 years based on an oral contract. Mr. Davis testified that during the base period, the per-head lease covered 30 yearlings at \$9.00 per head and 20 pairs at \$13.00 per pair. The lease was for a six- or seven-month period and the annual lease income was \$1,500.00 gross. Water from the domestic well on the residential lot, Lot 20, is piped to a stock tank on Lot 28. Each lot, including a partially fenced area of the residential lot, is separately fenced to facilitate grazing.

4. The witness testified that the comparable sales utilized by the Respondent were all subdivision lots. Sales 1 and 2 are not fenced and there is no livestock water available to those lots. There are private easements to those lots that allow access to an existing roadway, whereas his five parcels have no access to public roads. Many years ago, a maintainer was used to define a roadway and nothing has been done to that road since. As shown in the photos of Lots 20 and 21 in Petitioner's Exhibit B-1, the roadway is approximately 90 feet left of the trail Mr. Davis uses to maintain the fencing. There is no electrical service extended to the vacant lots, although the comparable sales located across the street have electrical service. The roadway, Way of Patience, is a private easement road in the Chaparral Valley Subdivision and it is the only access to the vacant

lots. Mr. Davis believes that if the public were to use the road known as Way of Patience, they would be trespassing on private property.

5. Mr. Davis testified that three of the comparable sales are used for horse grazing, not cattle grazing. He does not have any income information for these lots.

6. The witness testified that the Respondent indicated an annual income of \$2.76 per acre for the five vacant lots. His actual gross income was near \$2.76 per acre before expenses for water, fencing, and taxes. Petitioner's net income was closer to \$2.00 per acre.

7. Mr. Davis testified that the northern portion of the residential lot is fenced and is used as pasture. Respondent's assessed value is incorrect since the comparable sales used in their appraisal are located on county maintained roads whereas his lot is not. He does not receive county services such as road maintenance.

8. The witness testified that Comparable Sale 3 might have water since it is adjacent to a residence, but Comparable Sales 1 and 2 do not have existing water.

9. During cross-examination, the witness testified that he is not an appraiser and has not valued property other than his own purchases. He has valued his properties based on the income approach, although he could not testify as to the exact numbers, other than what he leased the lots for in past years.

10. During re-direct, the witness testified that he was previously a bank auditor. He has reviewed agricultural credits for banks in the past. As a result of that experience, he understands and has utilized the income approach for the valuation of his property.

11. The Petitioner is requesting a 2003 actual value of \$224,175.00 for Docket No. 42459 and zero value for Docket No. 42460.

12. The Board asked Mr. Davis for clarification on his expenses. Mr. Davis testified that the property taxes for the five vacant lots total \$2,438.00 per year and that the property taxes for the residential lot are \$1,867.00. Fencing expenses are averaged at \$1.00 per foot per year. Lifting the water is an expense of \$40.00 per month, which covers five months of cattle grazing or \$200.00 per year. Mr. Davis indicated that there is approximately 4,000 feet of fencing on the six lots.

13. Respondent's witness, Jane A. Penley, an Agricultural Appraiser with the Elbert County Assessor's Office, presented an indicated value of \$253,651.00 for Docket No. 42459 based on the market approach. The indicated value of Docket No. 42460 was \$17.45 per acre based on the income approach as agricultural grazing land.

14. Ms. Penley testified that the Respondent recognizes the five vacant land parcels as grazing lots and she has physically inspected all five lots. The lots are a high mesa location in the Chaparral Valley Subdivision. The lots are predominately natural grasses with limited moisture.

15. Ms. Penley testified that the market approach was utilized for the residential parcel.

All of the sales were similar to the subject in size and landscape. The income approach is required for agricultural land valuation using a production rate. The rental rate for agricultural land has been frozen since 2000 due to the drought. The capitalization rate, as determined by state statute for agricultural land, is 13 percent.

16. During cross-examination, the witness testified that there are no facilities on the five agricultural lots for working cattle. There is no water on the five vacant lots and Mr. Davis has supplied water, although the cost of transporting water is not allowed as an expense by state statute.

17. Under cross-examination, the Respondent's witness testified that she physically inspected the comparable sales. They were used only for the market approach and this method of valuation was not used in the actual valuation of the five vacant lots. The witness testified that all agricultural land in the Elbert County Grazing Class 4147 is valued at an actual value of \$17.45 per acre.

18. Mr. Scott Lawrence, a witness for the Respondent, is an Appraiser with the Elbert County Assessor's office. He testified that, based on the appraisal, the final opinion of value for Lot 20, the single-family residence, was \$253,651.00. The County Board of Equalization adjusted the assigned value to \$244,575.00.

19. The witness testified that Economic Area 1, which includes the subject property, has only one small town. The subject's subdivision has private platted roads, not public roads, and is platted with grassy lots. Access to the Chaparral Valley Subdivision is through an adjacent subdivision that has 7-acre to 10-acre lots that are located on public roads.

20. The witness testified that he physically inspected the subject site. The process of arriving at an opinion of value was determined by three separate approaches to value. The residence was valued based on the market approach and the land and outbuildings were valued based on the income and cost approach as applicable.

21. Mr. Lawrence testified that the subject dwelling has a walkout basement, a low maintenance exterior with an upgraded roof and is located on a high ridge with panoramic views. The outbuilding is a 1,600 square foot airplane hangar with an airstrip adjacent to the property. No value was assigned to the privy.

22. Respondent's witness presented four comparable sales ranging in sales price from \$197,000.00 to \$339,000.00 and in size from 1,532 to 1,749 square feet. After adjustments were made, the sales ranged from \$291,329.00 to \$328,263.00. Based on the market approach, the indicated value was \$305,000.00 for the dwelling, lot, and outbuildings.

23. The witness testified that he had to abstract the market land value based on vacant land sales within the Chaparral Valley Subdivision. He determined a value of \$1,068.00 per acre for residential lots within the subdivision or \$37,500.00 for the subject site. He subtracted that value from the indicated value of the comparable sales for a base value of \$247,500.00 for the dwelling. The indicated value of the airplane hangar is \$5,540.00 based on the cost approach and a depreciation rate of 80 percent. The land has to be re-inserted at its agricultural value of \$611.00,

indicated by the income approach and based on state statute, to arrive at the final indicated value of \$253,651.00 for the residential lot.

24. During questioning from the Board, the witness testified that the subject dwelling is upgraded with low maintenance steel siding and casement windows. He believes the subject is nicer than average. A quality adjustment was made to Sale 2 based on his appraisal judgment since he wanted to reflect the quality of the subject's exterior. He did not make an interior inspection of the subject property.

25. Petitioner's rebuttal witness, Mr. Lyndon D. Burnett, from Deer Trail, Colorado, testified that he is in the cattle business and runs steers on approximately 9,000 acres of which 6,000 acres to 7,000 acres are leased.

26. Mr. Burnett testified that he has physically inspected the subject property's vacant lots and formed a value opinion as to the lease potential. Mr. Burnett testified that the Davis property would likely lease for \$5.00 per acre for an annual income of \$875.00 per acre.

27. Ms. Penley was recalled and testified that the lease amount utilized in the income approach was set by the Division of Property Taxation (DPT) and that the Respondent does not have the ability to use actual leases for each piece of land. The United States Department of Agriculture sets the unit number for grazing purposes. Pastureland in Elbert County is only grazed five to seven months per year.

28. The Respondent assigned an actual value of \$244,575.00 for Docket No. 42459 and \$3,084.00 for Docket No. 42460 for tax year 2003.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject properties were correctly valued for tax year 2003.

2. The Colorado Constitution requires the use of the Income Approach in the valuation of agricultural land. The Board recognizes that the income approach formula provided by the USDA and required by the DPT is based on types of properties rather than on individual properties. Petitioner testified that he received income from the five vacant lots and these lots have access, although the access road is poor and undeveloped. For these reasons, the Board believes that there is value in these lots and Petitioner's request for a zero value is denied.

3. The Respondent's assigned value was more persuasive when it was indicated that all agricultural land in Elbert County Grazing Classification 4147 is valued at \$17.45 per acre. The subject property, which is considered grazing land, is included in that classification.

4. The Respondent provided a well-documented appraisal report in support of the assigned value for Docket No. 42459, the residential property. The Petitioner did not provide any evidence or testimony to dispute Respondent's assigned value. The Board agrees with Respondent's

methodology in the valuation of the residence by the market approach, the airplane hangar by the cost approach, and the valuation of the agricultural land by the income approach. Appropriate adjustments were applied to the comparable sales to compensate for the location and poor road access of the subject property.

5. After careful consideration of all of the evidence and testimony presented, the Board affirms Respondent's assigned values for tax year 2003.

ORDER:

The Petition is denied.

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 6th day of August 2004.

BOARD OF ASSESSMENT APPEALS

Rebecca Hawkins

Rebecca Hawkins

Judée Nuechter

Judée Nuechter

This decision was put on the record

AUG 06 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

