

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>LADYBUG CORP.,</p> <p>v.</p> <p>Respondent:</p> <p>DOUGLAS COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: F. Jerome Thomas Address: 4520 Lariat Drive Castle Rock, Colorado 80104 Phone Number: (303) 688-3664 E-mail: Attorney Reg. No.:</p>	<p>Docket Number: 38998</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 9, 2001, Judge Nuechter and Mark R. Linné presiding. Petitioner’s Representative, Jerome Thomas, appeared pro se. Respondent was represented by Lance J. Ingalls, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**LOTS 4, 5, 6 PHASE 1 BROOKSIDE BUS CENTER #4 1ST AMD
(Douglas County Schedule Nos. R0425475, R0425476, R0425477)**

Petitioner is protesting the 2001 actual value of the subject property. The subject consists of three vacant land parcels that have been zoned for commercial use, located in the Brookside Business Center south of the Town of Castle Rock.

ISSUES:

Petitioner:

Petitioner contends that the subject properties have been incorrectly classified. Further, he contends that the subjects have been used for agricultural purposes. If the subjects had been correctly classified as agricultural, their values would be significantly lower.

Respondent:

The Respondent contends that the subject property does not meet the agricultural definition, and additionally asserts that an apiary is not a ranch. Any uses that may be agricultural are incidental to the land. The most appropriate methodology to consider in the valuation of the subject is from the approaches to value.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Jerome Thomas, General Manager for LadyBug Corporation, presented the appeal on behalf of Petitioner.
2. Based on an agricultural classification, but presenting no comparable market sales, the Petitioner presented an indicated value of \$420.00 for the subject property.
3. The witness testified that the subject is comprised of three lots in the southern part of Castle Rock. The witness testified with respect to numerous definitions from the Colorado Revised Statutes, including apiary, farmer, and plant nursery.
4. The Petitioner testified that due to the agricultural use of the subject sites, they should properly be classified as agricultural. He cited a statute, 35-1-102(6), concerning the definition of agriculture. He described the agricultural uses on the site, including the growth of native cacti. The witness described the apiary operation on the subject cite. Additionally, he described the "Preble's Meadow Jumping Mouse" as an endangered species that has adversely affected the subject's value. The witness testified with respect to various documents submitted to the Board detailing continuing efforts to determine the impact of the mouse.
5. The witness testified that the subject is potentially impacted by the Preble's Meadow Jumping Mouse. One of the subject lots is in a mouse protection area. The only use permitted on this lot is an ongoing agricultural use, if the property falls into the endangered species category as indicated by Petitioner. The Respondent has classified the land as commercial.
6. The witness testified that two of the lots cannot be developed because they do not have access.

7. Under cross-examination, the witness testified that a Preble's Meadow Jumping Mouse has never been found on the subject property.

8. The witness testified that he believed that his property had been valued as if it had a road present providing access to the individual sites.

9. The witness testified that he believes that bees are not domestic animals.

10. Petitioner is requesting a 2001 actual value of \$420.00 for the subject property.

11. Respondent's witness, Mr. Larry Shouse, Colorado Certified General Appraiser, Senior Appeals Appraiser with the Douglas County Assessor's Office, presented an indicated value of \$379,800.00 for the subject property based on the market approach.

12. Respondent's witness presented four comparable sales ranging in time adjusted sales price from \$31,832.00 per acre to \$43,567.00 per acre. After consideration of all factors of differentiation, Mr. Shouse concluded a unit value of \$20,000.00 per acre for Schedule No. 0425475, and \$40,000.00 per acre for Schedule Nos. 0425476 and 0425477.

13. The witness testified that he followed the appropriate guidelines, including Colorado Revised Statutes and the Assessors Reference Library guidelines prepared by the Division of Property Taxation.

14. Mr. Shouse testified that the subject is comprised of three vacant commercial land parcels. The Douglas County Assessor's Office has considered and valued the subject as platted vacant, commercial parcels. The sites are located at the southern end of Castle Rock. Other commercial uses in the immediate vicinity are generally commercial, and include gasoline stations, automobile sales and service uses adjacent to the subject.

15. The witness testified that he valued the subject property as raw land, with no improvements having been made to the property.

16. The witness testified that a road accessing the property would enhance its value.

17. Referring to the Petitioner's testimony regarding another agriculturally zoned parcel near the Castle Rock Factory Outlet stores having a similar classification as that requested for the subject, Mr. Shouse testified that there is an agricultural use of land near the factory outlet store parcel. Additionally, the witness indicated that there are cattle on the site near the factory outlet stores.

18. Under cross-examination, the witness indicated that the subject is a profit-making entity.

19. Mr. Shouse testified that the subject property is valued as vacant, commercially platted land. He based his valuation on the definition and guidelines from the State Property Tax Administrator's guidelines found on pages 20 to 24 of Respondent's Exhibit C.

20. Respondent assigned an actual value of \$379,800.00 to the subject property for tax year 2001.

CONCLUSIONS:

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

2. The Board has carefully considered all admitted evidence and testimony and has affirmed the Respondent’s value. The Respondent presented comparable sales supporting the assigned value conclusion. The adjustments made to the sales are reasonable and take into consideration any differences in physical characteristics.

3. The Board denies an agricultural classification for the subject sites. The Board agrees with the Respondent that nursery and bee operations are properly classified as “other agricultural” property and are most appropriately valued using the applicable approaches to value. The agricultural land formula is not applied to land with uses such as those described by the Petitioner in his testimony. Further, we concur with our earlier decision that any definition of a nursery operator or an apiary operator as a “farmer” in Title 35 of the Colorado Revised Statutes does not affect the more specific definitions provided in Title 39 of the property tax statutes, and as further clarified by the directives of the Property Tax Administrator through the Assessors Reference Library of the Division of Property Taxation.

4. The Board believes that the potential presence of the Preble’s Meadow Jumping Mouse has not been demonstrably proven to have an impact on value. The referenced rodent has not been sighted on the subject, and the evidence presented to the Board was insufficient to require any additional consideration of this factor.

ORDER:

The petition is denied.

APPEAL:

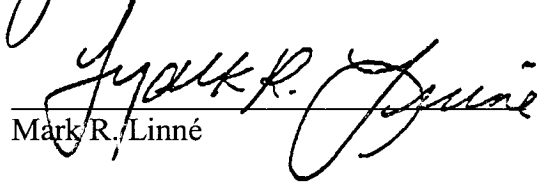
Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

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 31ST day of December, 2001.

BOARD OF ASSESSMENT APPEALS



Judge Nuechter


Mark R. Linné

This decision was put on the record

DEC 31 2001

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


Diane Von Dollen



38998.02

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<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Heather R. Hanneman, Esq. Address: 1600 Stout Street, Suite 1350 Denver, Colorado 80202 Phone Number: (720) 904-5219 E-mail: hanneman@lawyernet.com Attorney Reg. No.: 22383</p>	<p>Docket Number: 38998</p>
<p>ORDER</p>	

The Court of Appeals Opinion on Case No. 02CA0304 reversed the Board of Assessment Appeals Order dated December 31, 2001. The Court of Appeals concluded that the subject property meets the statutory definition of "agricultural land" pursuant to Section 39-1-102 (1.6) (a) (I), C.R.S. as well as the statutory definition of a "farm" pursuant to Section 39-1-102 (3.5), C.R.S. 2002.

ORDER:

Respondent is ordered to reclassify the subject property for tax year 2001 as set forth in the Court of Appeals Opinion.

The Douglas County Assessor is directed to change her records accordingly.

DATED and MAILED this 23rd day of September, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Judee Nuechter

Judee Nuechter

This decision was put on the record

SEP 22 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

