

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>BRUCE F. DROSTE, 25% INTEREST (Docket #41011) and EDWARD AND WILLIAM DROSTE TRUST, 25% INTEREST, BRUCE DROSTE, TRUSTEE, (Docket #41010),</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PITKIN COUNTY BOARD OF COMMISSIONERS.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Wayne B. Schroeder, Esq. Grimshaw &amp; Haring, PC</p> <p>Address: 1700 Lincoln Street #3800 Denver, Colorado 80203</p> <p>Phone Number: 303-839-3800</p> <p>Attorney Reg. No.: 2447</p>	
<p><b>ORDER ON STIPULATION</b></p>	

**THE PARTIES TO THIS ACTION** entered into a Stipulation, which has been approved by the Board of Assessment Appeals. A copy of the Stipulation is attached and incorporated as a part of this decision.

**FINDINGS OF FACT AND CONCLUSIONS:**

1. Subject property is described as follows:

**County Schedule No.: R14180 (Docket #41011), R14181 (Docket #41010)**

**Category: Valuation Property Type: Vacant Land/Conservation Easement**

2. Petitioner is protesting the 2001 actual value of the subject property.
3. The parties agreed that the 2001 actual value of the subject property should be reduced to:  

**see attached**
4. The Board concurs with the Stipulation.

**ORDER:**

Respondent is ordered to reduce the 2001 actual value of the subject property, as set forth above.

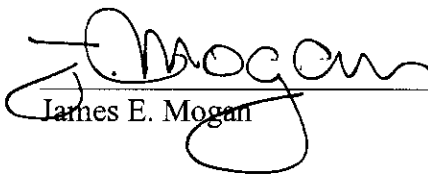
The Pitkin County Assessor is directed to change his/her records accordingly.

**DATED/MAILED** this 19<sup>th</sup> day of March, 2003.


This decision was put on the record

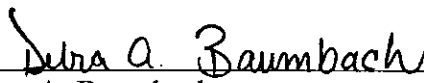
March 18, 2003

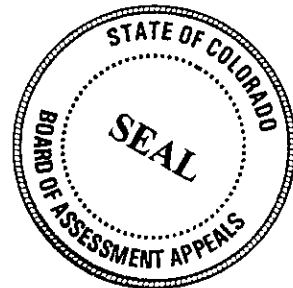
I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals

  
James E. Mogan

**BOARD OF ASSESSMENT APPEALS**

  
Karen E. Hart

  
Debra A. Baumbach



BOARD OF ASSESSMENT APPEALS  
STATE OF COLORADO

County Schedule Numbers 14180 and 14181  
Docket Numbers 41010 and 41011

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STIPULATION (As to Tax Year 2001 - 2004 Actual Value)

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Bruce F. Droste, 25% interest and  
Edward and William Droste Trust, 25% interest, Bruce Droste, Trustee,

Petitioners,

v.

Pitkin County Board of Equalization,

Respondent.

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Petitioners, Bruce F. Droste, 25% interest, the Edward and William Droste Trust, 25% interest, Bruce Droste, Trustee, and Respondent Pitkin County Board of Equalization hereby enter into this Stipulation regarding the valuation of the subject property for tax years 2001 through 2004, and jointly move the Board of Assessment Appeals to enter its order based on this Stipulation. This Stipulation is a compromise of State Board of Assessment Appeals Docket Number 41010 and 41011.

This Stipulation is also entered into by Peter C. Droste, 25% interest, and the Peter C. Droste, Jr. and Blise Droste Trust, 25% interest, Peter C. Droste, Trustee (hereinafter referred to as "Additional Parties").

The Petitioners, Respondent, and Additional Parties agree and stipulate as follows:

1. The property subject to this stipulation is a metes and bounds parcel situated in Section 32, Township 9 South, Range 85 West, and is identified as Parcel No. 2643 321 00 025 in Pitkin County Assessor's Office records. The subject property consists of approximately 465 acres and has been assigned four County Schedule Numbers: 14178, 14179, 14180, and 14181, with each Schedule Number constituting a 25% interest in the subject property.

2. The subject property was originally classified residential, and assessed at the applicable residential assessment rate. The classification of the subject property changed during the County's 2001 reassessment because a conservation easement was placed on the subject property in 2000.

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PITKIN COUNTY

Because residential use is precluded by the terms of the conservation easement, the County Assessor could not continue to classify the subject property as residential. Therefore, the classification of the subject property was changed to vacant land in the 2001 reassessment year.

3. The County Assessor originally assigned the following actual value to Schedule Numbers 14178, 14179, 14180, and 14181: \$1,743,800.00, for a total actual value of the subject property of \$6,975,200.00, or approximately \$15,000 per acre.

4. After filing a Petition for Abatement or Refund of Taxes, the Board of Equalization retained the vacant land classification and adjusted the value of Schedule Numbers 14180 and 14181 as follows: \$1,543,750.00, or approximately \$13,279.57 per acre.

5. After further review and negotiation, the Petitioners, Additional Parties, and the Respondent agree to the following actual value for Schedule Numbers 14178, 14179, 14180 and 14181 in tax year 2001: \$11,625.00 per 25% interest, or approximately \$100.00 per acre.

6. The Petitioners assert that certain unique characteristics of the subject property, and the terms of the 1999 Conservation Easement, justify the actual value stipulated to in this document, including:

A. The 1999 Conservation Easement, covering the 465 acres at issue, prohibits any and all development of the subject property.

B. The Petitioners may currently make passive recreational use of the property, including but not limited to: (1) hunting; (2) shooting; (3) horseback riding; (4) cross-country skiing; and (5) hiking. However, only the Drostes may ever make passive recreational use of the subject property. A prospective purchaser may not make similar use of the property ("The [right to make passive recreational use of the subject property] . . . shall expire when the [Drostes] are no longer the fee owners of the Subject Tract." 1999 Conservation Easement ¶ 4(2)). Because the right to make passive recreational use of the property expires upon transfer, there is no market value associated with the present ability of the family to use the subject property for the uses listed above.

C. The Conservation Easement also places certain affirmative obligations on the Petitioners, including (1) maintaining all responsibility, costs and liability related to the operation, upkeep, maintenance of the subject property; (2) keeping the subject property free of any and all liens; (3) creating and implementing a reclamation program, including regarding, seeding, water storage, pasture management techniques, in compliance with US Department of Agriculture standards; (4) paying all taxes on the subject property; and (5) maintaining sufficient water rights to preserve the conservation values of the subject property. 1999 Conservation Easement ¶ 5.

D. Given the above restrictions on use of the subject property, and discussions with real estate appraisers, real estate brokers, and other land professionals, the Petitioners have determined that a value of \$100.00 per acre is reasonable for the subject property.

7. The actual value agreed to in this Stipulation is attributable to the unique circumstances of the subject property. While other open space, or land subject to conservation easements within Pitkin County, may be valued at a higher per acre rate, a combination of factors present on the subject property including: topographical features, the low potential or desirability of acquisition of the subject property for view protection, its proximity to a roadway, and the inability of a subsequent purchaser to use the land burdened by the conservation easement for any recreational activities, distinguish the subject property from other parcels of open space within Pitkin County and justify an actual value of \$100.00 per acre.

8. With respect to Schedule Numbers 14180 and 14181, the County shall issue a refund check or issue a credit against 2002 taxes in the amount of \$10,720.91 for each Schedule Number, or a total of \$21,441.82, for tax year 2001. The County shall also issue a refund check or issue a credit against 2003 taxes in the amount of \$10,720.93 for each Schedule Number, or a total of \$21,441.82, for tax year 2002. The total amount of the refund check(s) and/or credit(s) for Schedule Numbers 14180 and 14181 shall be \$42,883.64. The County shall issue the refund check(s) or post the applicable credit(s) on or before April 28, 2003.

9. With respect to Schedule Numbers 14178 and 14179, the County shall issue a refund check or issue a credit against 2002 taxes in the amount of \$12,120.39 for each Schedule Number, or a total of \$24,280.78, for tax year 2001. The County shall also issue a refund check or issue a credit against 2003 taxes in the amount of \$10,720.91 for each Schedule Number, or a total of \$21,441.82, for tax year 2002. The total amount of the refund check(s) and/or credit(s) for Schedule Numbers 14178 and 14179 shall be \$45,682.59. The County shall issue the refund check(s) or post the applicable credit(s) in an expeditious manner.

10. The actual value of \$100.00 per acre shall be binding for tax years 2001, 2002, 2003, and 2004.

11. Two Petitions to the State Board of Assessment Appeals (BAA) were filed on October 4, 2002. March 17, 2003 has been scheduled as the hearing date on both petitions in Grand Junction, Colorado. The parties agree and stipulate that no hearing shall be held, and Petitioners hereby withdraw the above referenced Petitions.

12. This Stipulation constitutes the Parties' entire agreement concerning the subjects addressed herein, and shall supersede any and all previous or contemporaneous communications, agreements and understandings concerning those subjects, all of which are merged in this Stipulation.

13. This Stipulation shall be governed by and construed in accordance with the laws of the State of Colorado.

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14. Each Party or its representative hereby represents that the Party or representative signing below is authorized to enter into this Stipulation on behalf of the Party.

15. This Stipulation may be executed in one or more counterparts, all of which shall form a single agreement and each such executed counterpart may be delivered to the other party by facsimile transmission, which facsimile shall be deemed and treated as an original executed counterpart.

Dated this 16<sup>th</sup> day of March, 2003.



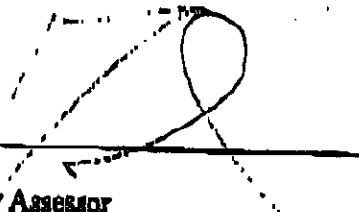
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