

**COMMENTS REGARDING
APPRAISALS BY
Timothy L. Walters
Tract 4 and Tract 10**

By: Stanley K. Mann
Date: August 17, 2009

First: It should be noted that I gave Tim Walters and the other two appraisers a package of documents on behalf of the two limited partnerships to aid them in ascertaining that Los Leones Subdivision was, in fact, a legitimate subdivision of approximately 1000 acres by some 24 partners. The informational outline given to each appraiser is attached hereto.

Walters and the other government-selected appraisers were specifically directed to talk to Steve Channel, the current County Planner, to verify the development and its progress and magnitude. I contacted Steve Channel on August 17, 2009 and he reported that no appraiser has ever talked to him concerning Los Leones Subdivision. He remarked to me that he recalled we were well on the way before electing the conservation easement choice.

Second: It is clear in the appraisal that Mr. Walters has elected to take the easy “telephone call” method of doing his appraisal. He looked at the property with me, made some phone calls, and ignored the fact that this was a legitimate development. Instead, he chose pasture-land as the “highest and best use.” By making this choice to ignore the development he mistakenly ascertained that the property was about one mile from the City, not contiguous, etc., even though all that is false. Thus, his job is easier, he makes his government client happy, and he gets paid.

It should be noted that none of the City of Walsenburg employees currently available for telephone calls were employed at the time we were granted extraterritorial water by the City and we elected not to annex to the City (see the outline given to the appraisers, and note that I gave Walters the name of the head of the City Gas Department because he was still with the City and was familiar with the subdivision in that he was in charge of all the gas line extensions. Gas was already extended to Filing 2). Walters apparently spoke to someone in the City (he does not say who) and made an assumption that the property was “not likely” to be annexed to the City of Walsenburg (see page 14). He then concluded that the property could only be developed in 35-acre parcels in the County and based his entire Review and Value Opinion upon that assumption. That assumption is actually less valid than the assumptions based upon actual facts as follows:

1. The property was already under development in Huerfano County as Los Leones Subdivision. It had been presented and approved under Section IV, Subdivision Regulations, of The Land Development Guide, Huerfano County, Colorado. Every development must meet the Comprehensive Plan Compliance requirements set forth in 4.02.07 of Section IV. Obviously, we met those requirements.

2. Two filings had already been approved (plats were recorded on the dates set forth in the outline given to the appraisers.)
3. Two homes already existed in Filing 1 (Building permits were issued, utilities extended, and neither is on 35 acres.)
4. Water contracts were granted under which the City of Walsenburg supplied water to both homes in Filing 1.
5. A signed recorded water contract for Filing 2 was also granted. It was understood by the County Officials and the City that the same process and same contract would be used for each Filing of Los Leones.
6. I tried to explain to each appraiser the informal process the City seemed to follow in these cases where water is supplied to a developing subdivision as it develops. Indeed, the contract is identical to Black Diamond subdivision west of town. (Note: Black Diamond also receives extraterritorial water from the City, and contrary to what Mr. Walters states in his Appraisal Review, has not been annexed to the City of Walsenburg.) It was a proper and safe assumption that this process would continue for the entirety of the 1000 acres in Los Leones because three such water contracts had already been signed by the City, and a similar pattern was followed with the development of Black Diamond.
7. Huerfano County was approving and rezoning the tracts as the developer applied, and it was clearly a safe assumption that this process would continue.

Thus, the entire premise upon which the review and opinion is based is **erroneous**. Misstatements are thus found throughout the document because of the erroneous premise, but additional errors were also included in the review and opinion. These will be noted.

Page 4:

Zoning is reported as Agricultural under Huerfano County zoning laws, but an assumption should have been added to note that **all Filings of Los Leones to date had been rezoned by the County to a much higher density: UR Urbanizing Residential District** (requiring just 6,250 square feet of lot area).

Walters states that utilities are not extended. As in any subdivision process, utilities were extended to Filing 1, partially extended for Filing 2 (Actually, Filing 2 had one City water tap already, and gas lines, electricity and telephone had also already been extended to Filing 2) and would have been extended down County Road 330 as the development moved southward. Walters noted that electricity and phone had already been extended.

Walters states that water was not available. However, every request for water extension to date had been granted. Again, one would not request water before actually developing the tract. And, it is common knowledge that a large tract (in our case 1000 acres) would be developed in smaller tracts of around 20 to 40 acres each. Walters should have begun on this premise and done his work accordingly, but that would have taken considerably more effort on his part.

Walters considers as “adverse influences on the property” things that others see as historical and quaint; that is the railroad line to the west and a distant mining tipple slag bed. It is not a gravel operation as he imagines.

Page 8

Whether the appraiser should have noted adjacent properties is questionable. The properties are separated by what would have been a public street. They were not really adjacent in the developed stage. Nobody in our conservation easement plans noted this issue. If Walters is actually correct, we may have to adjust this particular matter.

Page 9

Walters fails to appreciate the tremendous detriment to development land immediately adjacent to the City of Walsenburg when one gives up all development rights forever. Thus, his entire analysis of diminution in value rests upon a grazing land concept that is not a proper highest and best use for the subject property. His comparisons are often very large tracts that are, in fact, cattle ranches or 35-acre and up subdivisions. This comparison necessarily reduces the per-acre cost, and since no further development or very limited development is intended anyway, tends to soften the detriment to the land.

Page 10

Walters recognizes that the conservation “easement deed is a very restrictive encumbrance of the subject property.” Later, however, he tries to reduce the impact of this restriction by stating that the owner could combine the easement land with adjacent land and get a building site out of the deal. This appears to be a terribly unfair burden to impose upon an easement donor in order to reduce the value of the easement.

Page 14

Walters states that the subject property is “surrounded by open space and rural homes on 35 to 40 acre tracts.” There are no rural homes surrounding the subject tracts. They were part of a 1000 acre development, which is open now that half of it is in conservation easements and the other half would have been placed in easements. One home, owned by others and not part of Los Leones, is located about ½ mile south, and that home is on 10 acres.

Page 15

The statement at the top of the page is the reason Julie O’Gorman was brought before the Real Estate Commission. She mixed annexation to the City with zoning in the County, and arrived at an incorrect assumption. Walters has made a series of misstatements as well, but I doubt if he will be investigated by the Commission.

At the bottom of the page, Walters points out another mistake by O’Gorman.

Page 16

Top of page: Another O’Gorman mistake.

Page 18

The highest and best use is better defined in the case law and IRS regulations. The recent case of *Hughes v. Comm’r of Internal Revenue*, Case No. 6395-06, United States Tax Court sets forth the guidelines for valuation at page 10, *et seq.*

In the second paragraph Walters totally ignored the fact that the City had already determined the property to be annexable to the City. The two ordinances cited in the materials supplied to Walters were for property contiguous to the City and did not include the subject tracts, but all presentations to the City involved the entire 1000 acres and the first two parcels that were approved by the City were approved with the knowledge that the City would eventually get all the property. Nonetheless, the partners decided to develop in the County when the City agreed to grant City water extraterritorially to the subdivision. Walters ignores these facts altogether.

The conclusions drawn by Walters are based upon his refusal to actually look at the facts—which he never addresses—and upon his erroneous assumptions.

Page 19

Unfortunately, the appraiser (Julie O’Gorman) whom we employed in behalf of Walkers erroneously stated that annexation was part of her assumptions. We will have to deal with this error. We have consistently pointed out that this was in error – when Julie did it, at her hearing, etc. **No one seems to pay attention to what we have to say!**

Page 21

A market study was prepared in behalf of the partners during the development process of Los Leones. Walters was so advised, but elected not to address this fact in his review and opinion. See, outline supplied to Walters.

Page 22

A very big **misstatement** occurs in the second paragraph of the review and opinion. Walters claims “Black Diamond subdivision has received annexation to the city (sic) and has all utilities installed.” This is clearly not the case. Black Diamond is a significant distance from all existing development in the City and continues to operate with an extraterritorial water contract with the City which reads exactly like the one Los Leones executed with the City.

Further, the 9-hole City golf course and the so-called wild-life area are not really distinguishable from Los Leones. Los Leones has a great deal of wild-life, and a golf course was included in one of the comprehensive plans presented to the County. Los Leones had many options available for the final development plan. Further, Black Diamond does not have direct access to the golf course or the wild life area. Access is from Highway 160 for all persons desiring to use the facilities.

At the bottom of page 22 **Walters makes another false statement**, determining that the Los Leones appraiser (O’Gorman) “indicates that the proposed subject subdivision will sell for the same prices as the Black Diamond.” On page 175 of her report she very clearly reduces the prices of the lots on the subject property (Tract 10) because of the railroad and other mentioned items.

Page 24

Obviously Mr. Walters has made an assumption that does not seem to be true in real life. He states near the bottom of the page that the developer would have to pave County Road 330 to receive water and sewer. In fact, no part of Black Diamond is paved, and Los Leones has three water taps and has never been required to pave anything.

Page 39, 46, 47, 48

At least Walters recognizes that the land has conservation values, and that a lot of buyers have been attracted to the area.

Page 50

Error: Walters asserts that the subject property is “**bordered directly by Silver Spurs subdivision to the south. Actually, Silver Spurs is around 5 miles south of Los Leones.**”

Walters does recognize the development potential of the subject property in the last paragraph. However, unlike the statements set forth in *Hughes* at page 43, he fails to take this fact into consideration in setting value. He also fails to consider the fact that no future purchaser of the property can ever develop it in any way. See, *Hughes* at pages 42 and 43.

Page 53

Walters makes beneficial statements concerning the subject properties that he does not consider in valuation.

Page 67, *et seq.*

By assuming the property is grazing land Walters is able to reduce the diminution in value way beyond what it really should be.

Page 73, 74

By assuming an owner can simply go purchase adjacent land, Walters is able to add to his reduction in diminution value of the easement.