

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JERRY F. KALAVITY,</p> <p>v.</p> <p>Respondent:</p> <p>SAN JUAN COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Jerry F. Kalavity Address: 14031½ Washington Street Broomfield, Colorado 80020 Phone Number: (303) 280-1190 Attorney Reg. #:</p>	<p>Docket Number: 36939</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 9, 2001, Karen E. Hart, Karl Von Burg, and Mark R. Linné, presiding. Petitioner, Mr. Jerry Kalavity, appeared pro se. Respondent was represented by Judith Zimmerman, Assessor.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**BLK 17, LOTS 1-4 & 12-24, TOWN OF SILVERTON
(San Juan County Schedule Nos. 48291730170001, 48291730170031)**

Petitioner is requesting an abatement/refund of 1998 taxes on the subject property, which consists of two vacant land parcels.

ISSUES:

Petitioner:

Petitioner contends that the assigned value of the subject property has historically been too high, but that the assessor has now valued the property correctly. Petitioner would like the current value applied to the 1998 valuation.

Respondent:

Respondent contends that the assigned value of the subject property is supported by properly adjusted sales of similar properties, similarly situated, during the appropriate base period.

FINDINGS OF FACT:

1. The Petitioner, Mr. Jerry F. Kalavity, testified that the value assigned by the assessor to his property was finally correct, after having protested for several years. He felt that the new value was appropriate, and further feels he should get a credit for the previous years. This has been an ongoing value battle.

2. The witness testified that he had given his daughter a one-half interest in the property, and that she had been thinking about constructing a theme park, until she was informed that the subject was located in a possible snow slide-zone, and would not be given a building permit. He felt that the potential negative impact from the snow slide zone was the same in the past as it was currently and for this reason, the current lower values should be applied to the 1998 value.

3. In response to questions from the Board, the witness was unable to recall the previous valuation that he felt was appropriate for the subject.

4. The witness testified in response to further questioning from the Board that the value that the assessor had currently placed on his property should be the value for the year in question, 1998. He further indicated that if the value was accurate and accepted today, it should have been accurate and accepted two years prior.

5. In response to a final question from the Board, the witness testified that he had not examined any sales to establish the value of the property, assuming that the assessor examined sales to arrive at the value.

6. The Petitioner was unable to provide an estimate of value for the subject.

7. Respondent's witness, Ms. Judith K. Zimmerman, the San Juan County Assessor, testified that she felt she could offer some clarification on the valuation issue, indicating that the Petitioner was requesting an abatement for 1998. The value for 1998 was based on the level of value as of June 30, 1996. Ms. Zimmerman indicated that she believed the Petitioner was

requesting a value for 1998 similar to the value for 1999 and 2000, both which were based on a June 30, 1998 level of value. She further indicated that she had reduced the value for 1999 and 2000, and that the Petitioner wanted that value applied to the 1998 abatement.

8. The witness testified that the subject consisted of two parcels, which aggregately totaled 40,000 square feet. The first parcel, identified as Block 17, Lots 1-4, Town of Silverton, contains 10,000 square feet. The second parcel, identified as Block 17, Lots 12-24, Town of Silverton, contains 30,000 square feet.

9. Ms. Zimmerman testified that the property is zoned economic development, which allows for industrial types of buildings and campgrounds. Residential use is not allowed, and though all of the surrounding property is residential, the subject site is not suitable for residential use.

10. Respondent's witness presented 3 comparable sales ranging in sales price from \$15,000.00 to \$22,000.00 and in size from 5,000 to 60,000 square feet. After adjustments were made, the sales ranged from \$0.39 to \$2.10 per square foot.

11. The witness testified that the property was valued at \$.75 per square foot

12. Based on the direct sales comparison approach, the Respondent concluded a value for the subject property as follows: Lots 1-4 \$7,500.00; Lots 12-24 \$24,375.00, for a total property value of \$31,875.00.

13. In response to questions from the Board, the witness testified that she had sufficient sales during the applicable base period from which to derive a value for the subject.

14. The witness testified that she had used properties similar to the subject to establish the value, and had used sales both within and outside of the "blue zone," which is the avalanche zone in which building is restricted. Ms. Zimmerman indicated that while no two sales are ever the same, she felt that the sales she used were close enough in location to make reasonable adjustments. She specifically identified Comparable #1 as being only one block behind the subject, and being almost identical. She further verified that Comparable #1 was smaller in size in comparison to the subject.

15. The Board then requested clarification with respect to the value that the Petitioner was requesting, and questioned the Respondent with respect to the 1999 value that had been referenced by the Petitioner. The witness testified that she had not brought the 1999 value documentation with her and did not know what those values would be.

16. The witness indicated that the county had obtained a new aerial map in 1999 and she had used it to more precisely identify the location of many properties, including the subject. In doing so, the assessor had given the subject an adjustment. She did state that she had made a mistake by overstating the unbuildable portion of the site, in effect, adjusting for this factor twice, lowering the value of the property below the level she felt was appropriate. She only realized the error when the Petitioner appealed the property.

17. The witness testified that while they had always applied an adjustment to the subject's value to account for the unbuildable area, the aerial photo allowed for greater precision, and she determined that a greater discount should be applied to the subject.

18. In response to further questions from the Board, the witness testified that the values being requested by the Petitioner was the result of the double deduction having been applied to the subject.

19. The witness, in response to a question from the Board, testified that three lots were in the creek, and that a further adjustment to the Petitioner's value for 1998 would be appropriate. The witness identified Lots 1-4 and 20-24 as usable; the other lots have a more limited use. Lots 13-18 are the unbuildable lots, and the witness indicated that a 10% adjustment would be appropriate.

20. Respondent assigned an actual value to the subject properties for tax year 1998 as follows:

<u>Schedule Number</u>	<u>Value</u>
48291730170001	\$ 24,375.00
48291730170031	<u>\$ 7,500.00</u>
	\$ 31,875.00

CONCLUSIONS:

1. Sufficient probative evidence and testimony was presented to prove that the subject property was incorrectly valued for tax year 1998. An additional consideration for an additional area of unbuildable land is warranted.

2. The Board finds that the overall valuation of the subject property, prior to adjustment for the unbuildable portion of the property, appears to have been appropriately valued on the basis of comparable sales drawn from the market during the applicable base period.

3. However, the Board concludes that the application of an adjustment to account for the unbuildable portion of the subject should be applied to the larger parcel, Block 17, Lots 12-24. Given the Respondent's testimony, the reduction in value should be 10%, applied to the \$24,375.00 actual value. The valuation of this parcel, after the application of the adjustment of \$2,438.00 is \$21,937.00.

4. There was some confusion from the Petitioner with respect to the requested valuation, and the Board concurs with the Respondent that the values from the 1999 and 2000 base period cannot be used as a basis for comparison for a previous base period.

5. The Board affirms the valuation of the second parcel, Block 17, Lots 1-4 at \$7,500.00

ORDER:

1. Respondent is ordered to cause an abatement/refund to Petitioner, for Parcel #48291730170031, Block 17, Lots 12-24, Town of Silverton, based on a 1998 actual value for the subject property of \$21,937.00
2. Respondent's request for reduction in value on Parcel #48291730170001 is denied.
3. The San Juan County Assessor is directed to change her records accordingly.

APPEAL:

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

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result or Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 17th day of May, 2001.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Karl Von Burg
Karl Von Burg

Mark R. Linné
Mark R. Linné

This decision was put on the record

MAY 16 2001

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

Diane Von Dollen
Diane Von Dollen 36939.01

