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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>QWERTY PARTNERS,</p> <p>v.</p> <p>Respondent:</p> <p>ROUTT COUNTY BOARD OF EQUALIZATION.</p> | |
| <p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: W. Edward Neish Address: 30700 Road 14B Steamboat Springs, Colorado 80487 Phone Number: (970) 879-1224</p> | <p>Docket Number: 42502</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on March 9, 2003, Steffen A. Brown and Diane M. DeVries presiding. Petitioner appeared pro se. Respondent was represented by John D. Merrill, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**TR in W2NW4 16-4-84 36.67A
3200 Block of Routt County Road 18
(Routt County Schedule No. 950162001)**

Petitioner is protesting the 2003 actual value of the subject property, a 36.67-acre parcel with a 2,493 square foot residential improvement along with three agricultural outbuildings. The only value at issue is the subject residential improvements. The agricultural land and agricultural outbuildings are not at issue.

ISSUES:

Petitioner:

Petitioner contends that this appeal centers around depreciation that occurs when improvements are not optimal. The subject improvements are not designed and do not reflect the highest and best use of the underlying land. The subject property is located in Upper Pleasant Valley. Two of eight homes in Upper Pleasant Valley have been demolished and a third has been removed.

Respondent:

Respondent agrees that the improvements are not the highest and best use of the subject property. The improvements are of a lower quality and style than some of the home being built in the area. The Respondent's appraisal report reflects a lower value than was assigned by the County Board of Equalization.

FINDINGS OF FACT:

1. W. Edward Neish, Petitioner, presented the appeal on his own behalf.
2. Mr. Neish testified that if the improvements reflect the optimal use of the underlying land, then a comparison of the improved and unimproved property sales correctly reflects the improvement value. If the improvements are not optimal, then some of the sales value of the improvements is lost or transferred into the land value. He testified that Michael Kerrigan valued the subject property as if its highest and best use is its current use as agricultural land, agricultural outbuildings and a single-family residence.
3. Mr. Neish testified that the current use is not the optimal use. If the current use is the highest and best use of the property, then the methodology is flawed.
4. Mr. Neish described the land and surrounding area in detail. The subject is surrounded by property that differs in significant degrees from the subject property. The subject property benefits from the surrounding environment. Pleasant Valley is special and unique and Respondent has not taken that into account. The subject property has the benefit of 3,000-foot mountains, the Yampa River, and bona fide cattle ranches. Parts of the Valley are protected against developmental encroachment. The Yampa River connects to a wilderness area. Lake Catamount is directly north of the subject property and contributes to the value.
5. Mr. Neish testified that the heart of this appeal is that the subject residential improvements benefit from the Valley. As shown in Petitioner's Exhibit E, page 87, a property adjacent to the subject sold on November 19, 1999 for \$450,000.00. Improvements on the land had an actual value of \$155,000.00. In 2000, the house was razed and hauled away. The house could not have contributed significant value to the property. The land value was \$425,000.00 and the improvement value was \$25,000.00. This property was purchased to build an upscale home. The

highest and best use is as a luxury home site. The value is due to the fact that the property is located in Pleasant Valley.

6. Mr. Neish testified that Improved Comparable Sale 4, shown on page 23 of Respondent's Exhibit 1, is an excellent comparable that sold on January 4, 2000 to DW Productions for \$425,000.00. Mr. Neish testified that Improved Comparable 4 has a zero improvement value.

7. Mr. Neish testified that Improved Comparable Sale 3, shown on page 22 of Respondent's Exhibit 1, sold on May 20, 2003 for \$377,800.00. He believes that the pictures depict a scrape-off. The land was valued at \$370,000.00. This comparable is in a different area and does not have the amenities of the Upper Pleasant Valley.

8. Mr. Neish testified that the property shown in Petitioner's Exhibit E, page 62, sold on November 1, 2000 for \$899,000.00. There were two old structures, one was burned down and one was demolished. The improvements added little or no value.

9. Mr. Neish testified that the property shown on page 24 of Petitioner's Exhibit E sold on August 12, 1998 for \$750,000.00. Mr. Neish did not verify this sale, he relied upon the Parcel Detail Information Sheet from the Routt County Assessor/Treasurer website.

10. Petitioner presented four comparable sales ranging in sales price from \$377,800.00 to \$899,000.00. These sales were not adjusted to the subject property.

11. Petitioner is requesting a 2003 actual value of zero to \$151,500.00 for the subject improvements.

12. On cross-examination, Mr. Neish testified that Respondent's Improved Comparable Sale 4 has been renovated since it was purchased.

13. Mr. Neish testified that he did not talk to the owner of Respondent's Comparable 3 as to the remodel of the property.

14. Mr. Neish testified that he did not discuss any sale restrictions with Holloway, the owner of the property shown in Petitioner's Exhibit E, page 62.

15. Respondent's witness, Michael K. Kerrigan, a Registered Appraiser with the Routt County Assessor's Office, presented an indicated value of \$299,160.00 for the subject residential improvements based on the market approach. This is a recommended reduction from the \$307,740.00 previously assigned to the residential improvements.

16. Mr. Kerrigan testified that the subject property consists of 36.67 acres of agricultural land with a 2,400 square foot residence and three agricultural outbuildings located 11 miles south of Steamboat Springs, Colorado. The Respondent assigned a total actual value to the subject property

of \$340,790.00, with \$2,680.00 allocated to agricultural land, \$30,370.00 allocated to agricultural outbuildings and \$307,740.00 allocated to residential improvements.

17. Mr. Kerrigan testified that the subject property is valued by using the agricultural formula mandated by Colorado Revised Statutes, which is significantly below market value. Agricultural improvements are valued by using the three approaches to value: cost, market, and income. Of these approaches, the cost approach was employed using the Marshall and Swift Cost Manual.

18. Mr. Kerrigan testified that the highest and best use of the subject property is addressed in Respondent's Exhibit 1, page 15. Functional obsolescence takes into account the depreciation of a property. Mr. Kerrigan stated that he considers functional obsolescence a factor in valuing the subject property. The market approach takes into consideration obsolescence in the selling price.

19. Respondent's witness presented four comparable sales ranging in sales price from \$377,800.00 to \$850,000.00 and in size from 1,446 to 2,363 square feet. After adjustments were made, the sales ranged from \$141,960.00 to \$465,000.00.

20. Mr. Kerrigan testified to the comparable sales that he used in valuing the subject property. Comparable Sale 1 is located on 1.5 acres in the Strawberry Park area about 16 miles north of the subject property. It is a one-story ranch style home with 2,168 square feet of living area built in 1966. The property sold August 28, 2001 for \$625,000.00. Comparable Sale 2 is located on 36.78 acres in the Big Valley subdivision about 10 miles northwest of the subject property and consists of 2,363 square feet of living area. The property sold August 2001 for \$850,000.00. Comparable Sale 3 is located on 9.1 acres approximately 3.5 miles west of the subject property in the Blacktail subdivision. The house was originally built in 1983, consists of 1,618 square feet and sold May 20, 2002 for \$377,800.00. Comparable Sale 3 has been remodeled and added on to, but the original structure was not razed. The new owners lived in the house while adding on and remodeling. Comparable Sale 4 is located on 10 acres adjacent to the subject property. It was originally constructed in 1914, added on to in 1955, and has approximately 1,446 square foot of living area. Comparable Sale 4 sold January 4, 2000 for \$425,000.00.

21. Mr. Kerrigan testified that the Holloway property, shown on page 62 of Petitioner's Exhibit E, is located in the Lake Catamount subdivision. This is an exclusive subdivision with amenities. Restrictions at the time of the sale required the buyer to preserve the original ranch house located on the property. Therefore, he did not use this property as a comparable sale.

22. Mr. Kerrigan testified that the Trujillo sale, referenced on page 87 of Petitioner's Exhibit E, was not used since it was an older sale; he used more current sales. The buyer was motivated to remodel the house; however, after getting into it and discovering the poor workmanship, he decided to raze the house.

23. On cross-examination, Mr. Kerrigan testified that Comparable Sale 3 was the original house that had been added on to and remodeled. He testified that a portion of its ridgeline, as shown in the upper left photo on page 22 of Respondent's Exhibit 1, supports some of the same walls. The

carport was remodeled to create living area. The original windows were not retained.

24. Respondent assigned an actual value of \$307,740.00 to the subject residential improvements for tax year 2003. The Respondent recommends a reduction in actual value to \$299,160.00 for the residential improvements.

CONCLUSIONS:

1. For ad valorem tax purposes in Colorado, property must be valued based on the actual use of the property as of the date of assessment, January 1. The Respondent properly used the market approach to value the subject residential improvements. The subject land is valued using the agricultural formula as mandated by Colorado Revised Statutes. Extracting the land values from Respondent's comparable sales results in a range of improved values from \$141,960.00 to \$465,000.00. The subject residential improvement value was reduced to \$299,160.00, as recommended by the Respondent.

2. The Board does not agree with the Petitioner that the subject improvements should have little or no value because the value would be in the land. The subject property was being used by the Petitioner as his residence on the date of assessment; the property should be valued using the market approach to value. The Petitioner's argument of functional obsolescence is true; however, functional obsolescence is reflected in the selling price of the comparable sales shown in Respondent's Exhibit 1.

3. The Respondent presented a well-documented appraisal report, taking Petitioner's concerns into consideration. Further, the Respondent properly valued the subject property as set forth by Colorado Revised Statutes and by the Assessor's Reference Library.

4. After careful consideration of all of the evidence and testimony presented, the Board agrees with the Respondent that the 2003 actual value of the subject residential improvements should be lowered to \$299,160.00. The agricultural land and agricultural outbuildings should remain the same.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$332,210.00 with \$299,160.00 allocated to residential improvements, \$30,370.00 allocated to agricultural outbuildings and \$2,680.00 allocated to land.

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

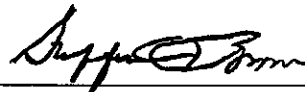
APPEAL:

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

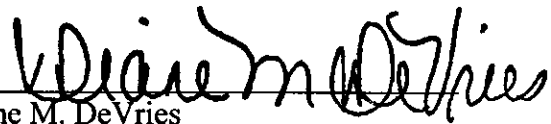
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 7th day of April, 2004.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown

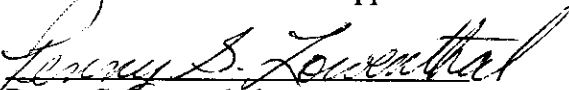


Diane M. DeVries

This decision was put on the record

APR 05 2004

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


Penny S. Lowenthal