

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>LOUIS A. AND MARY K. KOZIOL,</p> <p>v.</p> <p>Respondent:</p> <p>TELLER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 51840</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 22, 2010, Karen E. Hart and Debra A. Baumbach presiding. Ms. Mary Koziol appeared on behalf of Petitioners. Respondent was represented by Paul W. Hurcomb, Esq. Petitioners are protesting the 2009 actual value and classification of the subject property.

Subject property is described as follows:

**Lot 55 Morning Sun No. 1, 285 Morning Star Court
Woodland Park, Colorado
Teller County Schedule No. R0023487**

The subject property is a vacant land parcel consisting of 0.99 acres. A fire destroyed the residence in April 2006. The subject is located within the Morning Sun subdivision in Woodland Park.

Petitioners are requesting the subject be classified as residential and requesting an actual value of \$100,000.00 for tax year 2009. Respondent has assigned an actual value of \$169,240.00 for tax year 2009.

Petitioners contend the subject property has been illegally and erroneously classified as vacant land after a fire destroyed their residence in April 2006. The subject property has always been residential and debris from the fire was removed, leaving the remaining concrete foundation and driveway. There is water service, a septic tank, a leach field electrical service and a small outbuilding located on the property used for storage. The burned house foundation has been cleaned

up, and approximately 80- 85% of it remains usable area. Utilities and the driveway are also in place. However, Petitioners have no intention of rebuilding. Under Section 39-10-102(14.3), C.R.S., the subject property's improvements meet the definition of "Residential improvements" and should be reclassified as residential.

Ms. Koziol is relying on Respondent's three comparable sales to derive a value. Petitioners applied percentage adjustments to the three sales for all differences affecting the value, and determined an indicated value of \$100,000.00 for the subject property.

Petitioners believe a stigma attached to the property as a result of the fire and feel an adjustment of 5% should be applied. Also, an adjustment of 15% should be given to the driveway because it is shared by other homeowners and is sloping.

Petitioners further contend downward adjustments ranging from 5% to 15% should be made for differences in views and larger superior building sites. All of the comparable sale prices did not include a driveway or foundation at the time of sale. Through cost estimates that were obtained, Petitioners contend it would cost \$27,000.00 to remove the foundation, and there should be an adjustment of \$27,000.00 to each of the three sales to make them similar to the subject property.

Petitioners argued that Respondent failed to present all applicable sale dates for Sale 1, located on Sun Valley Drive, Schedule No. R0023307. While a sale occurred on May 30, 2006 for \$106,000.00, Respondent only represented the more expensive sale, occurring on October 26, 2006 for \$123,000.00. Further, Respondent's Sale 2 located on Sunrise Circle, Schedule No. R0023297, was not exposed to the open market and an adjustment of 10% should be applied for lack of open market exposure. After all adjustments, Petitioners' sales ranged from \$77,615.00 to \$111,040.00.

Petitioners are requesting the subject property be classified as residential and an actual value of \$100,000.00 for tax year 2009.

Respondent's witness, Ms. Janet L. Brooks, testified the subject was properly classified as vacant land under the ARL guidelines. Ms. Brooks cited the following text from the ARL, Volume 2, Chapter 5:

Structures that were fully destroyed prior to January 1 of the current year are removed from the current assessment roll, and if no other structures exist on the parcel, the land is reclassified as vacant for the current assessment year. However, if construction of a new structure was started prior to January 1 of the current year, or if the old foundation was still in place on January 1 and the owner intends to construct a new improvement on the old foundation, the property is classified according to its intended use as of January 1.

Structures fully destroyed after January 1 are classified according to their use on January 1 of the current year, and the value is prorated according to Section 39-5117, C.R.S.

Ms. Brooks testified that a four year collection period was used to analyze vacant land sales, from which she chose three sales. These sales were selected because they were considered the most similar to the subject property in size, location and topography.

Respondent's three comparable vacant land sales range in a time adjusted sales price from \$146,084.00 to \$172,550.00 and in size from 0.75 acres to 1.3 acres. The indicated adjusted sales price per acre range from \$130,769.23 to \$230,066.67.

Comparable Sale 1 is located in an adjacent subdivision, is smaller in size, and has a flat to gentle slope with minimal ground cover. Comparable Sale 2 is also adjacent to the subdivision, is smaller in size, has good views, a moderate slope, and has good exposure. Comparable Sale 3 is larger, rocky, and steeply sloping. No adjustments were made to any of the sales for any differences in topography, location, size, and utility. All three of the sales require nominal adjustments, and all are located within the same economic area, reflecting similar factors.

Respondent correlated to a median indicated value of \$190,293.63 and a mean indicated value of \$182,507.06. The subject was valued 15% below the indicated value range of the sales, which was intended to reflect inherent differences between mass appraisal and direct sales comparison value conclusions. No value was given to the utilities, septic, foundation, driveway, or portable playhouse.

Respondent assigned an actual value of \$169,240.00 to the subject property for tax year 2009.

The Board concludes Respondent correctly classified the subject property under statutory requirements as vacant land and not residential use under Section 39-1-103(c),(I), C.R.S. Although the foundations and driveway are in place, the Board could not conclude that Petitioners intended to rebuild after the fire. In fact, Ms. Koziol indicated she had no intentions of building on the subject site. The Board also concludes Petitioners presented sufficient probative evidence to prove the subject property was incorrectly valued for tax year 2009.

The Board gave little weight to Petitioners' adjustment calculations for differences, as there was insufficient data provided to support the percentage adjustments made to each of the sales. Petitioners adjusted each sale downward by the determined actual cost of removal of the foundation to make it like the subject property. This adjustment was based on actual cost figures, not market recognition.

The Board believes potential buyers are going to weigh any additional costs that might affect the ability to rebuild on an existing foundation, and they would consider the impact of the shared driveway. Also, buyers would consider location, view and topography as a factor in their decision. Respondent valued the subject on a per acre basis and did not adjust for differences in size, location, topography and access. There were also no adjustments made for the existing foundation and driveway. The subject was valued approximately 15% below the indicated market value, with the indicated median value at \$190,293.63 and the mean at \$182,507.06. The concluded value of \$169,240.00 is at the higher end of the range, and the Board was unable to reconcile how the 15% was applied. Petitioner's requested adjustment of 15%, for the shared driveway and direct cost of

\$27,000.00 for removal of the foundation, was not supported by market data.

The Board believes consideration should be given for those factors listed by Petitioner. However, because little market data was provided to support appropriate adjustments for those differences, the Board relied on Respondent's time adjusted sales price for each of the sales on a per site basis and not a sales price per acre basis. The Board was convinced buyers purchase property on a per site basis taking into consideration any factors such as location, view, access, and topography, which are reflected in the sales price. Respondent's Sale 1 was given most weight with lesser, but equal, weight given to Sales 2 and 3. Sale 1 was the most similar in size and is at the lower end of the range and Sales 2 & 3 are at the higher end of the range.

Accordingly, the Board concluded that the 2009 actual value of the subject property should be reduced to \$160,778.00.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject property to \$160,778.00.

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

APPEAL:

If the decision of the Board is against Petitioners, Petitioners may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 1st day of December 2010.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Debra A Baumbach

Debra A. Baumbach

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

Amy L B
Amy Bruijs

