

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DAVID L. NOVOTNY AND DEBBI ROBIE- NOVOTNY</p> <p>v.</p> <p>Respondent:</p> <p>CLEAR CREEK COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 52189</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 2, 2010, Diane M. DeVries and MaryKay Kelley presiding. David L. Novotny appeared pro se for Petitioners. Respondent was represented by Patrick D. McCarthy, Esq. Petitioners are protesting the 2009 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**4391 Herman Gulch Road, Silver Plume, Colorado
(Clear Creek County Schedule No. R007788)**

The subject property is a 660 square foot log cabin built in 1957. It has three rooms, a wood-burning fireplace, electricity, propane heat, and an outhouse with a septic storage vault. It has neither public water nor well water. The cabin is one of nine built between 1940 and 1967 on National Forest Service land. Land is not at issue in this hearing.

Petitioners hold a special, non-exclusive, use permit for 0.25 acres, the Forest Service having right of access. The permit authorizes occupancy of a recreational but not full-time residence. Applicable base cabin user fees are outlined in the lease. Revocation, suspension, and termination of the permit, including reasons in the public interest, are discussed in the lease.

Respondent assigned an actual value of \$44,670.00 for tax year 2009. Petitioners are requesting a value of \$35,000.00.

Mr. Novotny described the cabin as original. It has no insulation, ceiling planks are visible, and it is cold in the winter. It is without plumbing, and the cost of well installation would be the taxpayer's while ownership would be the Forest Service's. Access is via a non-maintained Jeep road. He considers his purchase price excessive in light of other sales prices but acknowledged his was an arm's-length transaction and that he read the Forest Service permit prior to purchase.

Mr. Novotny argued that the assigned value is excessive: users are denied full-time residency; the special use permit can be terminated at any time; and many of the tax benefits are unavailable to part-time owners (school district, recreation district, library district, for example). His requested value is a rounded 30% increase based on the 2008 value of \$26,900.00.

Respondent presented an indicated value of \$44,670.00 for the subject property based on the market approach. The witness presented three comparable sales ranging in sales price from \$50,000.00 to \$75,000.00 and in improvement size from 660 to 910 square feet. All are cabins located on Forest Service land: Sale 1 is the subject property, Sale 2 is a neighboring cabin, and Sale 3 is located five miles west on Forest Service land. After adjustments for cabin size, the sales ranged from \$45,958.00 to \$75,000.00. Value was concluded at the low end of the range.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2009.

Colorado constitution and statutes require application of the market approach in the valuation of residential property. The Board relied on Respondent's market analysis, which compares like properties with similar restrictions. No consideration was given to Petitioners' application of a percentage increase to the prior tax year actual value, as it is not considered to be an appropriate appraisal practice.

ORDER:

The petition is denied.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner 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 of the respondent county, 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).

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 within thirty days of such decision 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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

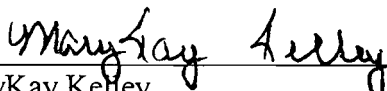
Section 39-8-108(2), C.R.S.

DATED and MAILED this 22nd day of April 2010.

BOARD OF ASSESSMENT APPEALS

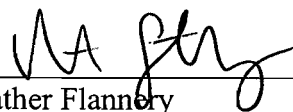


Diane M. DeVries



MaryKay Kelley

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



Heather Flannery

