

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ED AND ANN GASSMAN,</p> <p>v.</p> <p>Respondent:</p> <p>PARK COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 52375</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 25, 2010, Debra A. Baumbach and MaryKay Kelley presiding. Ed Gassman appeared pro se for Petitioners. Respondent was represented by Marcus A. McAskin, Esq. Petitioners are protesting the 2009 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Lot 13, Foxtail Estates, TBD County Road 18, Fairplay, Colorado
(Park County Schedule No. R0040342)**

The subject property is a vacant 35 acre site located in the Foxtail Estates Subdivision of unincorporated Park County near the town of Fairplay. Each subdivision lot has one share of ditch rights, and many owners pasture horses and cattle. Few homes have been built to date.

Respondent assigned an actual value of \$324,025.00 for tax year 2009 but is recommending a reduction to \$206,392.00. Petitioners are requesting a value of \$123,500.00

Petitioners purchased the subject site in May 2006 for \$123,500.00 as a tax-deferred exchange with a like-kind property. An exchange service and individual brokers handled the sale. Mr. Gassman and his accountant argued that federally-required time frames (45 days to property identification and 180 days to acquisition) did not put undue pressure on the parties or influence

price and that the sale was an arm's-length transaction and should have been included in Respondent's appraisal.

Mr. Gassman testified that Lots 10 and 11 in Foxtail Estates, each with 35 acres, were purchased on December 5, 2005. Individual sales prices were unknown, although the two lots were shown as a combined sale on assessor records dated August 9, 2007 for a total sales price of \$258,750.00. Petitioners made two arguments: the total sales price divided in half was \$129,375.00 and should have been included in Respondent's appraisal; and the combined 69.9 acre sale was included in Respondent's 2007 appraisal and should have been included in the current report.

Mr. Gassman argued that Respondent's three sales were not good comparisons for the subject: they were located up to twelve miles away in subdivisions he rejected as a buyer because of their higher prices; and not all had water rights, an important issue for buyers interested in pasturing.

Mr. Gassman presented two sets of Foxtail Estates sales supporting his argument that Respondent's time adjustment was not based on market data: the subject's \$123,500.00 sale in May of 2006 and a \$135,000.00 35-acre sale in May of 2009; and two 35-acre 2009 sales, \$135,000.00 in May and \$100,000.00 in October.

Respondent presented an indicated value of \$206,392.00 for the subject property based on the market approach. The witness presented three comparable sales ranging in sales price from \$230,000.00 to \$272,500.00 and in size from 35 acres to 38.59 acres. All were located in other subdivisions, no sales having occurred in Foxtail Estates during the extended four-year base period except the subject's tax exchange transaction and Lots 10 and 11, both of which the witness dismissed. After adjustments were made for time, acreage, tree cover, electric service, and proximity to national forest, the sales ranged from \$204,500.00 to \$284,300.00.

Respondent's witness declined use of the subject's tax deferred sale for several reasons: federal time restrictions, which can affect negotiation and price; the unavailability of additional tax exchange information on which to base a decision; and the nearly \$83,000.00 variance between the subject's price and its indicated value.

Respondent's witness declined using Lots 10 and 11 as comparable sales: individual sales prices were unknown; discounting could not be ruled out; and the combined 69.9 acres were not comparable in size to the subject's 35 acres.

Respondent's witness, discussing the area's growth and proximity to Summit County recreation, defended her time adjustment, which was based on application of all four methodologies: paired sales analysis, resale analysis, sales ratio trend analysis, and multiple regression analysis. Research data was not included in the report.

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

While agreeing that 1031 exchanges require careful review, the Board is convinced that the subject's transaction was not influenced by federal time constraints or other factors and is the best indicator of value.

The Board is persuaded that value increase in the subject's marketing area existed. Respondent's testimony and exhibits regarding a time adjustment were more convincing than Petitioners' 2009 comparisons, which occurred post-base period and cannot be considered.

The Board does not consider dividing the combined sales price of Lots 10 and 11 to be an appropriate method of establishing sales prices of two individual lots. Neither party produced verification that two individual sales occurred. Also, the Board does not consider the combined 69.9 acres comparable to the subject's 35 acres.

The Board considers the subject sale to be the best indicator of value, its time-adjusted sales price being \$159,315.00. Although Lots 10 and 11 are not considered valid comparable sales because their individual prices were not established, division of the total sales price in any manner supports the subject's sales price. All of Respondent's comparables sold considerably higher than the subject, suggesting that their sales prices reflected unknown factors.

The Board concludes that the 2009 actual value of the subject property should be reduced to \$159,000.00.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject property to \$159,000.00.

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

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 14th day of July 2010.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

MaryKay Kelley

MaryKay Kelley

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

Heather Flannery
Heather Flannery

