

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>STEPHEN C. EARLEY,</p> <p>v.</p> <p>Respondent:</p> <p>PARK COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 62052</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 30, 2013, MaryKay Kelley and Debra A. Baumbach presiding. Petitioner, Mr. Stephen Earley appeared *pro se*. Respondent was represented by Linda Michow, Esq. Petitioner is protesting the 2013 actual value of the subject property.

Subject property is described as follows:

**Breakneck Pass Ranch Lot 02
Park County Schedule No. R0043998**

The subject property consists of a 35.02 acre vacant land parcel located five miles south of Fairplay in the Breakneck Pass Ranch Subdivision. The site is situated in a gated community with utilities at the road, is adjacent to BLM land, and has the availability for a domestic well. The topography is described as 20% sloping with trees, a grassy meadow, and a flat area for a building site.

Petitioner is requesting an actual value of \$139,712 for the subject property for tax year 2013. Respondent assigned a value of \$225,000.

Mr. Earley argued that Respondent failed to uniformly value his lot in conformity with others. His assigned value of \$225,000 was significantly higher than others in the area and higher than Respondent’s three comparable sales: Lot 4 in the subject subdivision at \$139,712, Lot 6 in the subject subdivision at \$136,401, and Lot 10 (Black Mountain) at \$128,599.

Mr. Earley described Lots 4 and 6 as contiguous to Lot 5 and purchased by its owner. He argued that the Park County Assessor's Office unfairly values contiguous lots at a lower per-acre rate and noted that Lots 4 and 6 can be sold independently. He argued that property values should be based on market sales, yet assigned values of Lots 4 and 6 were based on contiguous value methodology but should have been compared to similar acreages per the market approach.

Mr. Earley based his requested value of \$139,712 on the average of assigned values for Lot 4 (\$143,024) and Lot 6 (\$136,401).

Respondent presented a value of \$225,000 for the subject property based on the market approach. Respondent's witness, Angela R. Kanack, Certified Residential Appraiser, presented five comparable sales ranging in sale price from \$133,000 to \$320,000 and one listing at \$255,000. After adjustments were made, the sales ranged from \$201,240 to \$266,320. Due to limited sales within the 18-month base period, Ms. Kanack extended her search to July 1, 2008. Adjustments were made for location, time, access, tree cover and access to electricity. Ms. Kanack placed most weight on Sale 1, which included an exchange, and Sale 2 because of their proximity to the subject within the Breakneck Pass Ranch subdivision. Although they were purchased by the owner of Lot 5, she considered both arm's length transactions.

Ms. Kanack testified that Lots 4 and 6 qualified for contiguous lot valuation described in Section 39-5-104, C.R.S. She acknowledged that it concludes to lower values because of its formula: application of a factor of .544 (data from the mass appraisal model for lot values in the area) to the total acreage of all three lots times Economic Area 6's base value of \$6,320; adjustments are then applied for differences affecting the value.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2013.

The Board acknowledges Petitioner's frustration with the concept of equalization of the appeal process. Colorado statutory and case law requires the use of the market approach to derive actual values: "Our state constitution and statutes make clear that individual assessments are based upon a property's actual value and that actual value may be determined using a market approach, which considers sales of similar properties." *Arapahoe County Board of Equalization v. Podoll*, 935 P.2d 14, 17 (Colo.1997).

The Board can consider an equalization argument (comparison of actual values of similar properties to the actual value of the subject property) if evidence or testimony is presented showing that the assigned value of each of equalization comparable were derived by application of the market approach and that each comparable was correctly valued.

The Board understands that Petitioner disagrees with Respondent's contiguous valuation methodology for Lots 4 and 6 and recognizes that they are legally independent lots with different schedule numbers. However, the venue for change is the Park County Assessor, not this Board.

The Board agrees with Petitioner's argument that Lots 4 and 6 were purchased for premiums; a buyer would be motivated to pay more for additional acreage to increase utility and enjoyment. Also, Sale 4 included an exchange of another property, and Comparable 3 is a listing. While understanding there were limited sales in the area, the Board is not convinced that Lots 4 and 6 are indicative of market value for the subject lot.

Respondent included three other sales in the analysis that were located in competing areas. The Board gives most weight to Respondent's Sale 5 as it required no adjustments other than for location in an inferior area. It was an arm's length transaction and was not influenced by assemblage or any other factors.

The Board concluded that the 2013 actual value of the subject property should be reduced to \$201,240.

ORDER:

Respondent is ordered to reduce the 2013 actual value of the subject property to \$201,240.

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-nine 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 29th day of November, 2013.

BOARD OF ASSESSMENT APPEALS

MaryKay Kelley

MaryKay Kelley

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.

Milla Lishchuk

Milla Lishchuk

