

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WYNN ELLIOTT,</p> <p>v.</p> <p>Respondent:</p> <p>SAN MIGUEL COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 64467</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 20, 2014, Sondra Mercier and Debra A. Baumbach presiding. Mr. Raymond Bowers, Agent, appeared on behalf of Petitioner. Respondent was represented by Steven J. Zwick, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 2011/2012.

Subject property is described as follows:

**151 Palmyra Drive
Lot 248-B, Telluride Mountain Village
Telluride, Colorado
San Miguel County Schedule No. 1080060070**

The subject property is a 0.43-acre residential vacant land site identified as Lot 248-B located in the Telluride Mountain Village. The subject is used as a buffer protecting the views and privacy of an adjoining site also owned by Petitioner. The subject is zoned for residential use and is accessed via a shared driveway easement. The site is irregular in shape and the terrain is gently sloping with good southern exposure. The location is within close proximity to shopping. Access to the ski slopes is through a ski trail.

Petitioner is requesting an actual value of \$860,000 for the subject property for tax years 2011/2012. Respondent assigned a value of \$1,200,000 for the subject property for tax years 2011/2012.

Petitioner's witness, Mr. Raymond Bowers, testified he has over 17 years of experience listing and selling vacant land sites in the market area. Mr. Bowers stated that market conditions have been steadily declining which resulted in lower property values over the last several years. Several newly developed subdivisions including 58 vacant sites have been added to the local property inventory and also contributed to declining values in the area. Mr. Bowers claims Respondent has overvalued the subject site by using superior comparable sales and not sufficiently adjusting them for deficiencies affecting the subject's utility and marketability.

Mr. Bowers testified the subject site was originally purchased in conjunction with Petitioner's adjoining site in order to preserve privacy and views. Mr. Bowers claims that Respondent did not adequately consider the subject's less-than-average size relative to the comparable sales, which are significantly larger allowing for greater site utility. According to Petitioner's witness, Respondent also did not consider that the subject site is accessed by a shared driveway easement servicing three neighboring properties. In addition, the witness stated that Respondent did not adjust the sales for the steep terrain or the sewer easement running through a portion of the site resulting in a diminished site utility and higher construction costs. Mr. Bowers argued Respondent's adjustments for access to the ski slopes from the site were nominal. Mr. Bowers stated that the subject does not have a ski-in and out access; the connection to the slope is through a 300 foot ski trail.

Petitioner's witness presented a market approach consisting of three comparable sales ranging in sale price from \$610,000 to \$1,200,000 and in size from 0.12 acres to 0.65 acres. After adjustments were made, the sales ranged in sales price from \$755,000 to \$860,000. Mr. Bowers testified that in determining an appropriate adjustment for access to the ski slopes, he reviewed Assessor's values of the properties that have direct ski in and out access with sites that access ski slopes through a ski trail.

Respondent's witness, Ms. Nancy C. Zimmermann, a Certified Residential Appraiser employed by the San Miguel Assessor's Office, presented a market approach consisting of four comparable sales ranging in sales price from \$750,000 to \$1,892,500 and in size from 0.6 acres to 1.17 acres. After adjustments, the sales ranged from \$975,000 to \$1,324,750. Ms. Zimmermann testified she made adjustments for location/ski access, views, topography, privacy and lot size. Ms. Zimmermann did not give weight to Sale 4 in the final value conclusion as Sale 4 was used for clarity purposes only. Ms. Zimmermann stated there were sufficient sales during the statutory base period and therefore considering sales in the extended base period was not warranted.

Ms. Zimmermann testified that Telluride Mountain Village market area is considered a prestigious upscale neighborhood consisting of high-end vacation homes with exceptional views and access to the ski slopes. Ms. Zimmermann stated there is a ski trail running through the development granting access to the ski slopes for sites with no direct ski-in and out access. Ms. Zimmermann contends the subject site is considered average in size with excellent unobstructed views and is located near local shopping. Ms. Zimmermann testified that shared driveway easements are common in the area and have no impact on values or marketability. In addition, Ms. Zimmermann stated that she was unable to locate the recorded sewer easement that Petitioner's witness described. Ms. Zimmermann testified the final value is well supported by the sales and adjustments were made for all differences affecting the value.

Petitioner presented sufficient probative evidence and testimony to prove that the subject's valuation for tax years 2011/2012 was incorrect.

The burden of proof is on Petitioner to show that Respondent's valuation is incorrect. *Board of Assessment Appeals v. Sampson*, 105 P.3d 916, 920 (Colo. App. 2002). After careful consideration and the testimony and exhibits presented at the hearing, the Board concludes Petitioner met this burden. While both parties presented a market approach in developing a value for the subject; Respondent's sales all took place within the base period while Petitioner utilized some sales that occurred within an extended base period. According to Section 39-1-104(10.2) (d), C.R.S., it is acceptable to consider sales that occurred in the extended time frame if there is insufficient data to make an adequate determination of value. The Board found that although Petitioner's Sales 2 and 3 occurred within the extended base period, they provided a reliable representation of market perception for sites similar in characteristics and size to the subject site. The Board agrees with Petitioner's position that although Respondent's sales occurred within the base period, Respondent's Sales 2 and 3 are significantly larger in size and should only be given minimal weight.

The Board found that both parties did not appropriately support their adjustments through market extraction. Petitioner's witness derived adjustments from personal experience working in the market area and the adjustment for ski access was based on comparing Assessor's values of sites with direct ski access versus access via a ski trail or near ski trail. The Board finds Petitioner's methodology of comparing Assessor's values in developing adjustments for the differences in ski access is not supported through market analysis. Petitioner's use of Assessor's values from a previous assessment cycle does not take into account characteristic differences such as size and topography. Therefore, the Board gave minimal consideration to this approach.

In addition, the Board gave minimal consideration to Respondent's methodology in deriving adjustments. With the exception of the adjustments made to Sales 2 and 3 for differences in site size, all other adjustments were based on 5% of the sales prices and were not supported in the market.

The Board gave most weight to two of the sales used by both parties: Petitioner's and Respondent's Sale 1, Lot 226 BR; and Petitioner's Sale 3 and Respondent's Sale 4, Lot 359. Both parties testified that Lot 226 BR is superior to the subject and Lot 356 is inferior. Therefore, the Board found that the value is better supported at the median of the two sales and concluded that the 2011/2012 actual value of the subject property should be reduced to \$975,000.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2011/2012 actual value of \$975,000.

The San Miguel 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 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 4th day of November, 2014.

BOARD OF ASSESSMENT APPEALS

Sondra W m

Sondra Mercier

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

