

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WILLIAMS FAMILY TRUST I AND II,</p> <p>v.</p> <p>Respondent:</p> <p>EAGLE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 71044</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 16, 2018, Diane DeVries and Cherice Kjosness presiding. Petitioner was represented by Jenya C. Berino, Esq. Respondent was represented by Holly Strablizky, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Petitioner’s Exhibits 1-49 and Respondent’s Exhibits A-J were admitted into the record.

Subject property is described as follows:

**302 Mill Creek Circle, Vail, CO
Eagle County Schedule No. R064772**

The subject property consists of a custom designed two-story home with an attached dwelling unit located in the prestigious Mill Creek Circle area in the city of Vail. The gross living area is listed as 6,083 square feet and contains 8 bedrooms and 9.5 baths. The home was originally built in 1963, but beginning in 2013, there were several building permits issued for the addition of a basement area and an oversize garage, as well as some remodeling. The quality of the construction is rated as very good.

Petitioner is requesting an actual value of \$14,000,000 for the subject property for tax year 2017. Respondent assigned a value of \$16,757,200 for the subject property for tax year 2017.

Petitioner’s witness, Trustee Penny Williams, testified that the Williams family have owned the subject property since 1968. Several generations have enjoyed stays at the home. It was one of

the original homes constructed in the Mill Creek Circle and originally belonged to the Mayor of Vail, Mr. Dobson. She stated that the location of the circle between the peak and the gondola makes it a very desirable area. Most of the original homes have been razed and newer, larger homes built in their place. The subject is right across the street from the entrance to the circle, a busy traffic area. In addition, the other homes and trees block any views of the Gore range which the homes on the outside of the circle enjoy. The subject is more than a block from the gondola. The home was originally built as a duplex, but that use was not legal under the current zoning due to the size of the lot. The extra unit could legally be used as employee housing only. In 2013, Petitioner applied for a variance to allow a legal duplex use which was granted to the current owner only. The variance will not transfer if the property is sold, which lowers the market value of the subject. The other homes in the Circle can be legally developed and sold as duplexes.

Regarding the building permits, Ms. Williams testified that the family did not want to change the character of the home, but to cure the deferred maintenance to maintain the integrity of the home. It was in deplorable condition with bats and other animals coming into the home. The boiler room was modernized and enlarged and a garage and basement were added. However, no "modernization" or "updating" such as infinity pool, spa, open concept rooms, or décor were added. The bedrooms are all the same. The only change to the kitchen was new appliances.

Ms. Williams believes the comparable sales used by Respondent's witness are superior in quality, location, view, and ski in/out access.

Petitioner is asking for a 2017 actual value of \$14,000,000 for the subject property.

Respondent presented a value of \$17,000,000 for the subject property based on the market approach.

Respondent presented five comparable sales ranging in sale price from \$9,375,000 to \$18,500,000 and in size from 4,697 to 8,879 square feet. After adjustments were made, the sales ranged from \$16,028,600 to \$18,956,590.

Respondent's witness, Andrea Noakes, Certified Residential Appraiser with the Eagle Assessor, testified that she specialized in the high end residential properties in Vail. She was qualified as an expert witness. She testified that she did an exterior and interior observation of the subject property and took the pictures included in the appraisal.

Ms. Noakes made no adjustments for time of sale. The report states that the residential market in Vail was stabilized over the 18-month data gathering period for the relevant level of value. Ms. Noakes testified that she used one sale that closed outside the base period, but that the home was under contract before the end of the period. Adjustments were made for gross living area, number of baths, effective age/condition, quality of construction, location, and Gross Residential Floor Area (GRFA). The GRFA is related to the City of Vail zoning and allowed uses, specifically primary/secondary two-family residences. The higher the GRFA calculation, the more valuable the property. The adjustments were explained in the addenda of the report and support for the large (50%) location adjustment and the GRFA adjustment were included. Ms. Noakes testified that no

adjustments were made for view, pools or spas. In addition, she did not consider Comparable 2 to have ski in/out access as there is a road between the home and ski area.

Ms. Noakes testified that she considered Comparable 1 to be the best comparable as it was purchased as a tear-down. It is just outside the Mill Creek Circle on the street to the north of the subject and she did not make an upward location adjustment. It has the lowest net adjustments and the indicated value is \$16,028,600. Comparable 2 is located west of the subject on the Mill Creek Circle. It is on a lot similar in size to the subject and with an accessory unit that is restricted to employee housing. It is smaller in gross living area and has a lower GRFA. Ms. Noakes lists the better access to the ski area, but makes no adjustment. The indicated value is substantially higher at \$18,956,590, so even if an adjustment could be ascertained, it is likely to still support the assigned value.

Respondent assigned an actual value of \$16,757,200 to the subject property for tax year 2017.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2017.

Colorado Constitution Article X, Section 20 and Section 39-1-103, C.R.S. specify that the actual value of residential real property shall be determined **solely** by consideration of the market approach to appraisal. The Board finds that Respondent appropriately completed a site-specific market analysis of the subject property, comparing sales of similar properties and adjusting for differences in property characteristics.

In a *de novo* BAA proceeding, a taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the challenged valuation is incorrect. See *Bd. Of Assessment Appeals v. Sampson*, 105 P.3d 198, 202, 208 (Colo.2005). The Petitioner disagreed with the sales used as comparables and the adjustments applied, but did not present any alternative sales or provide support for alternative adjustments. After considering all the testimony and evidence the Board concludes Petitioner did not meet its burden.

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-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-nine days after the date of the service of the final order entered).

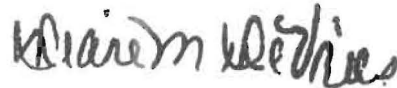
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

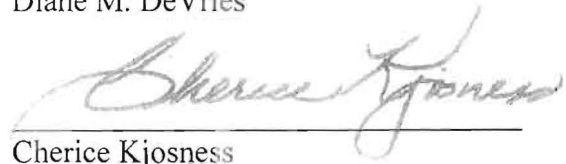
Section 39-8-108(2), C.R.S.

DATED and MAILED this 11th day of December, 2018.

BOARD OF ASSESSMENT APPEALS

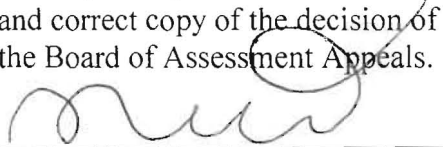


Diane M. DeVries



Cherice Kjosness

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



Milla Lishchuk

