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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>CYNTHIA E. AND DON BERLAND,</p> <p>v.</p> <p>Respondent:</p> <p>GRAND COUNTY BOARD OF EQUALIZATION.</p> | <p>▲</p> |
| <p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Cynthia E. & Don Berland Address: 8400 East Prentice Avenue, Suite 1140 Greenwood Village, CO 80111 Phone Number: (303) 721-1981 E-mail: Attorney Reg. No.:</p> | <p>Docket Number: 39098</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on January 28, 2002, Judee Nuechter and Debra A. Baumbach presiding. Mr. Donald Berland appeared on behalf of the Petitioners. Respondent was represented by Anthony J. DiCola, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**UNIT 1 TRACT 2 WINTER PARK HIGHLANDS
(Grand County Schedule No. R121570)**

Petitioners are protesting the 2001 actual value of the subject property. The subject consists of approximately a 5.36-acre tract, located in a platted subdivision named Winter Park Highlands, four miles south of Granby, Colorado.

ISSUES:

Petitioners:

Petitioners contend that the subject has been overvalued and that the Respondent has not taken into consideration all of the factors affecting the overall value. The site has limited utility due to the high water levels and water saturation of the area. The site is not suitable for development.

Respondent:

Respondent contends that the subject has been correctly valued. The Respondent has presented an appraisal that makes adjustments to the comparable sales in the area, resulting in a well-supported value for the subject.

FINDINGS OF FACT:

1. Mr. Donald Berland presented the appeal on behalf of the Petitioners.
2. Based on the market approach, Petitioners presented an indicated value of \$2,065.00 for the subject property.
3. Mr. Berland testified that, upon his investigation, certain tracts of land within the Winter Park Highlands Filing 1 were not suitable for development. The area is composed of high water tables and wetland areas, and the parcels not considered suitable for development were identified as tracts not lots.
4. Mr. Berland testified that information from a surveyor indicated that the subject was not suitable for development. Approximately 88% of the site is covered with willows and other types of vegetation generally found in wetland areas. The site area, according to the plat map, is classified as a tract and not a lot.
5. The witness testified that the site experiences flooding for approximately three months during the spring, usually generating from the Silver Creek Ski Resort. The site has no leach field or septic system. Current septic and leach field technology would not be feasible in managing percolation necessary in the function of the septic and leach fields.
6. Under cross-examination, Mr. Berland testified that he was not aware of any items contained in the covenants restricting development of the site. However, he testified that approximately 5% of the subject's land area is considered to be dry and usable.
7. The witness testified that the site has remained the same since the last valuation. He believes the subject should be valued on previous valuations.
8. Petitioners are requesting a 2001 actual value of \$2,065.00 for the subject property.

9. Respondent's witness, Mr. Willaim Wharton, a Licensed Appraiser with the Grand County Assessor's Office, presented an indicated value of \$87,000.00 for the subject property based on the market approach.

10. Respondent's witness presented three comparable sales ranging in sales price from \$60,000.00 to \$90,000.00 and in size from 1.64 acres to 3.04 acres. After adjustments were made, the sales ranged from \$81,500.00 to \$97,800.00.

11. Mr. Wharton testified that after examination of the documents and covenants, no restrictions were found that apply to the subject's tract. An appraisal was performed on the subject property.

12. The witness testified that a physical inspection of the subject was done on September 27, 2001. The subject's site is larger than the average in the area. He walked the site to inspect the topography and water levels affecting the area. At the time of inspection, it was determined that 88% of the site was covered with willow trees and the area was considered to be dry. The remaining area consists of approximately a 10-foot raised section covered by trees and underbrush. The raised area is approximately 80 feet by 350 feet, allowing for a building envelope, including a 40-foot setback from the roads and a 30-foot set back from the lot lines. There is also sufficient area for a septic system.

13. Mr. Wharton testified that the subject's area is highly desirable and located within close proximity to Winter Park and other amenities. There are public utilities in the area and the county maintains the roads.

14. Mr. Wharton testified that the comparable sales were selected for the close proximity to the subject. All of the sales were adjusted for size difference, and Sales #1 & #3 were adjusted for steep topography. Sales #2 & #3 were adjusted for having superior views.

15. Under cross-examination, Mr. Wharton testified that the subject was designated as a tract not a lot due to the original intent for the subject site to be a retaining pond for fire protection in the area. The homeowners in the area did not have the money to purchase the site. The fact that the plat map describes the subject as a tract and not a lot has no effect on the ability to develop the site.

16. Under further cross-examination, Mr. Wharton testified that he did not inspect the subject site during the spring run-off period to determine the water levels. However, there is an adequate amount of land situated at a higher elevation allowing for development, and there is adequate drainage.

17. Mr. Wharton testified that the subject's assigned valuation further takes into consideration all of the factors affecting the subject's site. The value is well supported by the comparable sales. The assigned value is lower than the lowest of the 16 sales within the subject's subdivision during the base period.

18. Respondent assigned an actual value of \$44,500.00 to the subject property for tax year 2001.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2001.

2. The Board has carefully considered all admitted evidence and testimony and affirmed the Respondent's value. The Respondent presented three comparable sales supporting the assigned value conclusion. The adjustments made to the sales are reasonable and take into consideration any differences in the physical characteristics.

3. The Board heard testimony from the Petitioners that the subject area was adversely affected by water saturation. A surveyor indicated the site could not be developed and any septic system was not feasible. However, the Petitioners did not provide the Board with any photos of the water saturation or documentation supporting the adverse effects on the land area. Additionally, there was no credible evidence presented indicating that the subject could not be developed and what impact it would have on the overall value.

4. It would be advantageous for the Petitioners to seek an analysis by an expert to determine the feasibility of development on the site. An expert would be able to estimate the usable land area, overall costs, and any additional costs associated with any adverse conditions affecting development.

5. The Respondent's assigned value does take into consideration all the factors affecting the overall valuation. The assigned value is lower than any of the sales in the area during the base period. The assigned value is supported and is affirmed at \$44,500.00 based on the evidence presented to the Board for consideration.

ORDER:

The petition is denied.

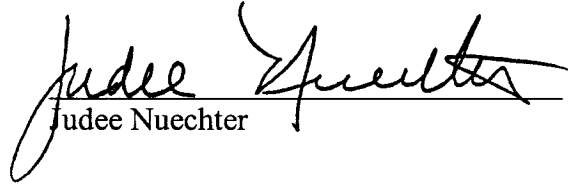
APPEAL:

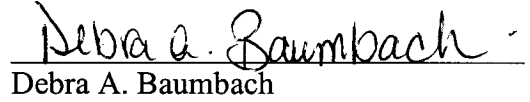
Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 12th day of March, 2002.

BOARD OF ASSESSMENT APPEALS

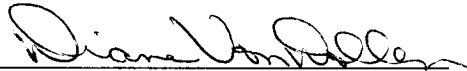

Judge Nuechter


Debra A. Baumbach

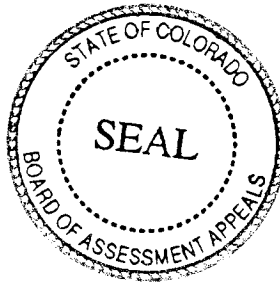
This decision was put on the record

MAR 11 2002

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



Diane Von Dollen



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