

BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203	
<hr/> Petitioner: DEBRA A. GREGORY-MITCHENER AND DALE E. MITCHENER, v. Respondent: SUMMIT COUNTY BOARD OF EQUALIZATION.	
Attorney or Party Without Attorney for the Petitioner: Name: Debra A. Gregory-Mitchener Address: 1534 Heeney Road 30 Heeney, Colorado 80498 Phone Number: (970) 468-8497	Docket Number: 41432
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on June 21, 2004, Diane M. DeVries and Debra A. Baumbach presiding. Debra A. Gregory-Mitchener appeared on behalf of Petitioners. Respondent was represented by Frank Celico, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1534 Heeney Road 30, Heeney, Colorado
(Summit County Schedule No. 1700018)**

Petitioner is protesting the 2003 actual classification of the subject property, eight residential cabins and a two-story lodge building located on approximately 5.79 acres of land divided by Highway 30.

ISSUES:

Petitioners:

Petitioners contend that Respondent has not given adequate consideration to the residential use and allocation of the subject property for tax year 2003.

Respondent:

Respondent contends that the subject property's uses were properly allocated and that the property has been correctly valued for tax year 2003.

FINDINGS OF FACT:

1. Debra A. Gregory-Mitchener presented the appeal on behalf of Petitioners.
2. Ms. Mitchener testified that she does not agree that Respondent has correctly allocated the residential area of the subject property. A small section of the subject property is for commercial use; however, the Respondent has classified the cabins as commercial property and has not given proper allocation to the residential portion.
3. Ms. Mitchener testified that three of the cabins were built in the late 1930's and five were built in 2000. The two-story lodge was built in approximately 1940. The main level of the lodge serves as Petitioner's residence and approximately 325 square feet of retail space. The second story of the lodge consists of a duplex area.
4. Ms. Mitchener testified that County Road 30 splits the property. The original three cabins and the two-story building are located on 1.5 acres situated on the east side of the road. The other cabins are located on approximately 4.5 acres and situated on the west side of the road.
5. Ms. Mitchener testified that the subject property was vacant for over 20 years. After Petitioners purchased the property, they discussed the possibility of using the subject property as a RV campsite with the Forest Service and Summit County. However, they did not want any further commercial development in the area. Additionally, Summit County's current building codes only permit the construction of homes on lots consisting of 7.5 to 20 acres. The subject's land area is less than 6 acres, which further restricts the use of the subject property.
6. Ms. Mitchener testified that a 1997 variance granted by Summit County allowed the commercial lodging use of the cabins.
7. Ms. Mitchener believes that Summit County has a high percentage of second home properties in the area. A large majority of these homes are rented on a nightly, weekly and monthly basis and have been classified as residential. The subject's cabins are rented on a monthly basis and not so much on a nightly or weekly basis, yet Respondent has classified the subject as commercial.

8. Ms. Mitchener testified that the property is located in a rural area. The ski slopes are too far away and no transportation is available in the area. It would be impossible to draw enough traffic to rent the cabins on a nightly or weekly basis.

9. Ms. Mitchener testified that the land had previously been classified as agricultural. The Assessor's office changed the classification to commercial. The land restrictions result in limited use and prevent the construction of any additional structures. Petitioner contends that the nine rental units and the land should be classified as residential and that the 325 square feet of retail space should be classified as commercial.

10. Ms. Mitchener testified that a discrepancy exists regarding Respondent's reported degree of updating to the cabins. Respondent reported that cabin "C" was 50% remodeled and that cabin "B" was 20% remodeled. Ms. Mitchener indicated that room additions and remodeling were completed on cabins "A" and "B" in 1975.

11. Petitioner is requesting a reduction in the allocation of commercial use to 4.5%, with the remainder allocated to residential use.

12. Respondent's witness, Michael Peterson, a Licensed Appraiser with the Summit County Assessor's Office, presented an indicated value of \$485,234.00 based on the cost approach to value. Respondent's witness used a state-approved cost estimating service to derive the market-adjusted cost value.

13. Mr. Peterson testified that the subject property is very unique; he knows of no other income producing properties that are similar to the subject. He testified that there were not adequate sales to rely on the market comparison approach and that the income approach was not relied upon due to a lack of income information.

14. Mr. Peterson testified that the subject property was not previously classified as agricultural, but is zoned A-1 agricultural. Zoning does not imply agricultural classification for property tax purposes; it just indicates an allowable use.

15. Mr. Peterson testified that the subject's A-1 agricultural zoning did not allow for its current use and therefore required a zoning variance to operate a short term lodging facility. To his knowledge, the zoning variance was changed in 1984 and allowed the property to be used as a guest ranch. The guest ranch was to include a 4,800 square foot main lodge with 6 lodging bedrooms, the owner's residence, a small retail area, a restaurant and bar, along with two one-bedroom rental cabins, two two-bedroom cabins, one three-bedroom cabin and a stable area. The main lodge was never built and the restaurant and bar area is currently residential quarters.

16. In 1997 the Petitioner requested an amendment to the existing variance to allow for additional cabins. The variance allowed construction of additional cabins in exchange for the bar and restaurant allowed under the previous variance. The Petitioner constructed three one-bedroom

cabins and a two-bedroom duplex unit. An additional condition contained in the 1997 variance defined that the cabins and lodging were to have short-term use.

17. Mr. Peterson testified that to his knowledge the subject was never used as a guest ranch. However, it was used as the owner's residence. One of the original cabins was rented on a long-term basis. The subject had been classified as residential until 1997, when the Petitioner changed its use.

18. Mr. Peterson testified that he followed the guidelines set forth in Volume 2 of the Division of Property Tax (DPT) manual in establishing the value of the subject property. A questionnaire was mailed to the Petitioner requesting information regarding the units. The Petitioner provided a spreadsheet along with partial leases on several of the units. The leases provided by the Petitioner were not signed. In addition, the lease for unit A indicated that the Petitioner was the tenant. Three of the cabins had rental rates of \$10.00 per month. It is believed that several of the leases were non-arms length transactions.

19. Mr. Peterson further testified that several errors were made in the initial allocations based on the available rooms per night and units rented on a long-term basis. A data entry error was made on the value of one of the improvements as well. All of the errors have been corrected. Mr. Peterson remarked that Petitioner had indicated that the Assessor had excluded the downstairs of the Lodge building in the residential improvement calculations and the residential land allocation. Mr. Peterson testified that the DPT guidelines and the mixed-use statutes were followed.

20. Mr. Peterson testified that Petitioner disputed the value assigned to cabin C in comparison to the value assigned to cabin B. The main difference in the value of the two cabins is the age difference and the depreciation of the two improvements.

21. Mr. Peterson testified that Petitioner cited many similar properties in the area that are rented on a short-term basis and have a residential classification. The properties mentioned by the Petitioner as well as others in the area all meet the statutory requirements for residential use. The subject property has a zoning variance restriction to short-term rental and does not meet the same requirements as the other properties.

22. Mr. Peterson testified that, due to the calculation error reported to the County Board of Equalization, the assigned value is below the corrected value and the indicated value presented in Respondent's Exhibit, which is the appraisal report. All of the issues regarding the subject have been addressed and adjustments have been made. Additionally, the subject was properly valued and classified following all the proper guidelines.

23. The Respondent assigned an actual value of \$443,091.00 to the subject property for tax year 2003, with 44% percent allocated to residential use and 56% allocated to commercial use.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the tax year 2003 classification and valuation of the subject property was correct.

2. The Respondent presented a well-documented and supported appraisal report. The Respondent followed the proper guidelines and statutes for valuing a mixed-use property. The Respondent relied upon the information provided by the Petitioner to determine the allocation of the residential and commercial use.

3. The Petitioner did not present any evidence or testimony to refute the allocation percentages presented by the Respondent. No credible evidence was presented that any of the units were leased for “extended stays” which would allow for additional residential allocation. The leases provided were not signed, one showed the Petitioner as the lessee and one showed a family member as the lessee. The Respondent took these matters into consideration in the allocation of residential use.

4. The Board concurs with the Respondent that, due to the variance and zoning restrictions, the subject does not meet the same criteria as other properties in the area that are rented out on a similar basis. Additionally, Petitioner requested the variance for the additional lodging cabins.

5. Based on all of the evidence and testimony presented, the Board affirms Respondent’s assigned value and classification allocation for tax year 2003.

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 9th day of September 2004.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries
Diane M. DeVries

Debra A. Baumbach
Debra A. Baumbach

This decision was put on the record

SEP 09 2004

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

Penny S. Lowenthal
Penny S. Lowenthal

