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| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ASPEN SKIING COMPANY, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>PITKIN COUNTY BOARD OF EQUALIZATION.</p> | <p>Docket No.: 53189</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on June 21, 2011, Diane M. DeVries and Lyle D. Hansen presiding. Petitioner was represented by F. Brittin Clayton III, Esq. Respondent was represented by Christopher G. Seldin, Esq. Petitioner is protesting the 2009 actual value of the subject property.

The initial hearing on Docket No. 53189 occurred on April 4, 2011. As a result of that hearing, the Board issued an Order Retaining Jurisdiction on April 15, 2011, and ordered Respondent to provide either comparable sales that are representative of the subject with similar use to a ski lift operation or determine a value by comparison of properties with similar surface uses, pursuant to Section 39-1-103(5)(b), C.R.S.

The Board received Respondent's Response to Order Retaining Jurisdiction on April 28, 2011. In that Response, Respondent submitted three comparable sales that it considered to be representative of the subject in terms of similar use to a ski operation.

The Board received Petitioner's Motion for Leave to Reply to Respondent's Response to Order Retaining Jurisdiction on May 2, 2011.

The Board received Petitioner's Reply to Respondent's Response to Order Retaining Jurisdiction on May 6, 2011 by the Petitioner. In that Reply, Petitioner's witness, Mr. Bruce Cartwright, stated that the Pitkin County Assessor's new comparable sales were not representative of the subject in that they do not have a use that is similar to a ski lift. Mr. Cartwright stated that the Pitkin County Assessor placed a value of \$20,000.00 each on two of the comparable sales. He stated

that the Pitkin County Assessor failed to complete a valuation analysis based upon surface use pursuant to C.R.S. 39-1-103(5)(b).

On May 13, 2011, the Board issued an Order on Petitioner's Motion for Leave to Reply to Respondent's Response to Order Retaining Jurisdiction. In that Order, the Board granted Petitioner leave to reply to Respondent's Response and ordered a rehearing, on this matter, strictly on the merits of Respondent's Response to Order Retaining Jurisdiction and Petitioner's Reply to Respondent's Response to Order Retaining Jurisdiction. That hearing was subsequently scheduled for June 21, 2011.

All factual findings previously determined in the Board's Order Retaining Jurisdiction, issued on April 15, 2011, which are unrelated to the merits of Respondent's Response and Petitioner's Reply, will remain in effect in this Order.

Subject property is described as follows:

Parcel A: Lots 1-14, Block 10, Eames Addition, Aspen, Colorado
Parcel B: Lots 1-7, Block 12, Eames Addition, Aspen, Colorado
Pitkin County Schedule Nos. R004556 and R004557

Respondent's witness, Mr. Larry Fite, testified that he contacted other ski resorts to find absolute comparable land sales and discovered none. He testified that he conducted a search for open space or excess land sales with lesser or limited utility when compared to the two subject lots. As a result of that search, Mr. Fite submitted three comparable sales ranging in sale price from \$150,000.00 to \$2,000,000.00 and in size from 20,242 to 98,053 square feet. After adjustments, the sale prices ranged from \$225,000.00 to \$2,600,000.00 or \$11.12 to \$26.52 per square foot. Mr. Fite concluded to a value of \$19.50 per square foot for the two subject parcels. Mr. Fite concluded to a value for subject parcel schedule number R004556 of \$532,350.00 and a value for subject parcel schedule number R004557 of \$304,200.00 for a total value for the two parcels of \$836,550.00.

Mr. Fite testified that Respondent's Comparable Sale 1 was a deed restricted open space parcel that was purchased by the adjacent parcel owner for control of that parcel because it was located directly in the foreground of his new residence. He testified that Respondent's Comparable Sale 2 was excess land created by a surveying error/oversight and was purchased by the adjacent property owner so that he could re-route the access driveway to adjacent lots, allowing for a safer and more convenient ingress/egress point. Mr. Fite testified that Respondent's Comparable Sale 3 was purchased by the adjacent parcel owner to accommodate a lot line adjustment. He testified that the acquisition provided no advantage in access or in the potential for additional floor area.

Mr. Fite testified that Respondent's Comparable Sales 1 and 2 had a Pitkin County Assessor's assigned value of \$20,000.00 for each parcel and that value was based upon an established value for open space parcels in Pitkin County of \$20,000.00 per acre.

Petitioner's witness, Mr. Bruce Cartwright, testified that Respondent's three comparable sales are dissimilar in utility to the subject lots and that each comparable property was sold to the adjacent

owner and did not receive exposure to the market. He testified that the buyers of the three comparable sales had different motivations in acquiring the parcels from a typical buyer of the subject lots.

Petitioner's witness, Mr. Bruce Cartwright, testified that he reviewed actual assigned values of ski lift parcels in Eagle and Summit Counties. Mr. Cartwright presented comparable assessor assigned values for ski lift land in those two counties ranging in size from one acre to 35 or more acres. The assessor assigned values for these parcels ranged from \$0.04 to \$3.72 per square foot.

Mr. Cartwright presented the six ski land parcels in Pitkin County that were presented in his uniformity analysis in the original hearing. Mr. Cartwright testified that the six parcels have an assessor's assigned value range of \$0.34 to \$1.84 per square foot. He testified that the parcel associated with the Silver Queen Gondola on Aspen Mountain, with an assessor's assigned value of \$0.46 per square foot, is the best comparable in terms of location, access, use and zoning to the subject parcels. Mr. Cartwright concluded to a uniformity value for subject parcel schedule number R004556 of \$12,558.00 and a uniformity value for subject parcel schedule number R004557 of \$7,176.00 for a total uniformity value for the two subject parcels of \$19,734.00.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2009.

In its Order Retaining Jurisdiction, the Board ordered Respondent to provide either representative comparable sales or properties with similar surface use. Respondent did not provide properties with similar surface use. The Board found that determining the actual value of the subject property based on similar surface use, as used in Petitioner's comparable sales, would have been most appropriate. However, pursuant to the plain language of Section 39-1-103(5)(b), "If...at the *sole discretion of the assessor* the use of the three approaches cannot accurately determine the actual value of any parcel of taxable property... then the actual value thereof shall be determined by comparison of the surface use of such property with a similar surface use" (emphasis added). Accordingly, the Board finds that it does not have the authority to determine the actual value of the subject property based on similar surface use.

Further, the Board did not find that Respondent's comparable sales were adequately representative of the subject property. The Board agreed with Mr. Cartwright that Respondent's three comparable sales have utility different from the subject lots in that these sales were purchased by the adjacent parcel owners to either fulfill the buyer's individual ownership issues or to enhance their existing property in terms of access or marketability. The Board concluded that the potential market for the three comparable sales is restricted to the adjacent owners and have minimal marketability to the real estate buying public.

Because the Board was unable to apply similar surface use and did not find Respondent's comparable sales were representative of the subject property, the Board determined that the subject property was most analogous to open space, which is comparable to the existing use of the six ski land parcels presented by Petitioner. The Board relied upon the Pitkin County Assessor's established assigned value for open space of \$20,000.00 per acre. The Board concluded that this established

open space value is the appropriate value for the two subject parcels since the combined subject parcel areas equates to 0.99 acre. The Board concluded that the 2009 actual value of the subject property should be reduced to \$20,000.00.

ORDER:

Respondent is ordered to reduce the 2009 actual value of the subject property to \$20,000.00.

The Pitkin 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 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 1 day of July 2011.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Diane M. DeVries

Lyle D. Hansen

Lyle D. Hansen

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

Amy Bruins

Amy Bruins

