

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MAI-LAN HUYNH AND DAVID SMITH,</p> <p>v.</p> <p>Respondent:</p> <p>LAKE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 55950</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 3, 2011, Debra A. Baumbach and MaryKay Kelley presiding. David Smith appeared pro se for Petitioners. Respondent was represented by Lindsey Parlin, Esq. Petitioners are protesting the 2010 actual value of the subject property.

Subject property is described as follows:

**Tract 58, Gordon Acres, Twin Lakes, Colorado
Schedule No. 10212006 (0.554 acre)**

**Tract 66, Gordon Acres, Twin Lakes, Colorado
Schedule No. 100002108 (1.09 acre)**

The subject property consists of adjoining vacant parcels in a platted residential subdivision, which features variable terrain and steep hillsides throughout. The parcels, with ground cover and trees, are bisected by wetlands and a stream and have partial lake and mountain views.

Petitioners are requesting actual values of \$27,522.00 for Lot 58 and \$49,998.00 for Lot 66 for tax year 2010. Respondent assigned values of 39,891.00 for Lot 58 and \$78,487.00 for Lot 66.

Mr. Smith described the subject parcels as being dissected by wetlands, which encompass 40% of the acreage, render considerable portions unbuildable, and impact the cost of ingress and egress.

Mr. Smith testified that, despite purchasing Lot 58 post-base period (February 2009) for \$20,000.00, the actual values for the subject parcels doubled for tax year 2010 based on Respondent's use of a single sale in the subdivision. He argued that one sale is an insufficient sampling, does not reflect what is typical for the area, and does not adhere to Section 39-1-103(8)(a), C.R.S., which requires "a representative body of sales" for comparison.

Mr. Smith presented eight transactions in Gordon Acres and a graph showing the volatility of sale prices. He considered Lot 64, Respondent's comparable sale, to be an outlier.

Mr. Smith presented five sales in the Mount Elbert Plamor area and one in Gordon Acres, which suggest a price per acre of \$22,000.00. He noted that Respondent declined to use this data.

Mr. Smith presented a current listing of Tract 67 in Gordon Acres, which has reduced in price from \$95,000.00 during the base period to \$84,500.00 and currently to \$79,900.00. This site has a well but no ingress/egress issues.

Petitioners considered actual values equal to those of tax year 2008 to be appropriate.

Respondent's witness, Howard Tritz, Lake County Assessor, discussed the subject's marshlands and foliage, considering them to be positive aesthetic features. However, agreeing that portions of the sites precluded construction and that the wetlands likely require additional ingress/egress building costs, he reduced the original actual values by 5%. The Board of Equalization further reduced the values.

Mr. Tritz testified that only one qualified transaction took place in Gordon Acres during the extended base period. He offered Tract 64 (1.01 acre) at 410 County Road 26, which sold April 9, 2007 for \$91,000, as his sole comparable sale.

Mr. Tritz described the 1B South section of Mount Elbert Plamor as similar to Gordon Acres: same economic area, similarly isolated, without municipal water and sewer, good views, and steep gravel roads. Eleven sales in 1B South were considered, the median sales price being \$119,565.00 per acre, higher by \$29,556.00 per acre than the value concluded by comparing Tract 64 in Gordon Acres.

Mr. Tritz declined to use seven of the eight sales (Sale 4 was presented by both parties) offered by Petitioners in Petitioner's Exh. 1, pg. 8: Sales 1, 2 and 3 occurred in 1997, 2000, and 2005, before the data collection period; Sales 5 and 6 were never exposed to the open market per Transfer Declarations provided by the parties; Sales 2, 7 and 8 were quit claim transactions, and Sales 7 and 8 occurred in 2009 and 2010, after the data collection period.

Mr. Tritz discussed Petitioner's six sales presented in Petitioner's Exh. 1, pg. 14: Sales 1, 2 and 3, all 0.3 acre sales, were located in Mount Elbert Plamor 1C, which faces the highway with inferior views and lower values; Sales 4 and 5 (both 0.46 acre) were located in Mount Elbert Plamor 1B, similar to 1C and inferior to the subject; and Sale 6, while located in Gordon Acres, was disqualified because it was not listed on the open market and, therefore, was not an arm's length transaction.

Respondent presented sufficient probative evidence and testimony to show that the subject property was correctly valued for tax year 2010.

The Board cites the definition of market value per the Appraisal Institute:

[T]he most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after *reasonable exposure in a competitive market* under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. THE DICTIONARY OF REAL ESTATE, Tenth Ed., pg. 222 (2005) (emphasis added).

The Board agrees with Respondent that some of Petitioners' sales were not exposed to the open market and do not meet the definition of market value.

With regard to Section 39-1-103(8)(a), C.R.S., the Board is convinced that Respondent met appraisal standards in researching both the subject and competing subdivisions for comparable sales. The sales in Mount Elbert Playmor support the indicated value per the single transaction in Gordon Acres. While a single sale does not represent a market, support from sales in a competing subdivision meets the statutory requirement.

The Board acknowledges the purchase of Lot 58 for \$20,000.00. It cannot be considered in the valuation process because it occurred after the assessment date of January 1, 2009 and because the specifics of the sale are unknown (e.g., arm's length transaction, exposure on the open market).

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-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 16 day of June 2011.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

MaryKay Kelley

MaryKay Kelley

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

Amy Bruins
Amy Bruins

