

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>MIDDLETON ASSETS, LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>GUNNISON COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 64813</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 19, 2014 MaryKay Kelley and James R. Meurer presiding. Petitioner, Middleton Assets, LLC was represented by Mr. Phil Pfeiler, owner. Respondent was represented by Art Trezise, Esq. Petitioner is protesting the 2014 actual value of the subject property.

Subject property is described as follows:

**6001 County Road 811, Crested Butte, Colorado  
Gunnison County Parcel No. 3177-000-00-146**

The subject is a two-story, single-family frame house accessed by County Rd. 811, and located in the Washington Gulch area, approximately eight miles north the town of Crested Butte in Gunnison County. The property is entirely surrounded by the Gunnison National Forest and only two miles of the road leading to the property is open throughout the year. The house was constructed in 2001 and contains 3,122 square feet of above-grade living area space, plus a 1,830 square foot unfinished basement garage. The house has three bedrooms and three and one half baths, is good quality construction, and was considered to be in overall average condition as of the assessment date. In addition to the main structure, there is a 2,310 square foot detached metal garage, primarily used for storage. Heating for the house is via propane forced air, electricity is via a generator and batteries, water is via a private well, and sewer is via a private septic system. The site consists of a patented mining claim, and includes 19.82 acres.

The property is physically unique in that it is considered to be “off grid” meaning no public services (e.g. police or fire protection) are provided, and no public utilities including electricity, natural gas, water, sewer are available to the property. In addition, access to the

property is restricted to approximately five months per year given the snowfall in the area and lack of access and road maintenance during the remaining seven months.

Petitioner is requesting an actual value of \$480,000 for the subject property for tax year 2014. Respondent provided an appraisal reflecting a value of \$800,000; however, is deferring to the Board of Equalization's (BOE) assigned value of \$729,130 for tax year 2014.

Petitioner's witness, Mr. Phil Pfeiler referenced 55 qualifying sales during the statutory base period to conclude to his opinion of value. Mr. Pfeiler calculated the arithmetic mean of these sales, reflecting an average sales price of \$541,416, an average square footage of 3,542, and average price per square foot of \$152.00, and an average lot size of 4.31 acres. Relying on the average price per square foot, Mr. Pfeiler concluded to \$153.00 per square foot for the subject or \$480,000. Mr. Pfeiler testified that this concluded value did not include deductions for the lack of public services, the lack of utilities, and the lack of access resulting from the seasonal use.

In addition to the 55 sales, Mr. Pfeiler developed a spreadsheet reflecting a comparison of the sales prices vs. the assessed values of 17 qualifying sales. Mr. Pfeiler concluded that his property was valued at approximately 134% in excess of the mean of these sales, and used this analysis to further support its value of \$480,000.

During testimony, Mr. Pfeiler stated that the comparable sales used in Respondent's appraisal were dissimilar to the subject, and were superior properties in superior locations. Mr. Pfeiler further testified that Respondent did not adequately adjust or deduct for the off-grid characteristics of the subject, the lack of impact for ski area influence, as well as the lack of access to the property for the majority of the year.

Respondent's witness, Mr. George Lickiss of the Gunnison County Assessor's Office, developed a market (sales comparison) approach and presented six comparable sales to support his opinion of value. Sales Nos. 1-3 were on-grid sales, and were given the most weight after adjustment in the conclusion of value. Sales Nos. 4-6 were off-grid sales of smaller dissimilar properties, and were included as a cross-check for the analysis and adjustment of the first three sales. Sale prices for Comparables Nos. 1-3 ranged from \$592,000 to \$1,295,000 prior to adjustment, and \$749,910 to \$876,588 subsequent to adjustment. All of the sales occurred in the statutory or extended base period. The significant adjustments to the sales consisted of site date of sale, site size, living area square footage, basement, age, garage, detached structure, off-grid characteristics, and location. The off-grid and location adjustments were based on a regression and pair sale analysis contained in the report. Placing most weight on Sales Nos. 1 and 2, Mr. Lickiss concluded to a value of \$800,000 for the subject.

As noted, Respondent's Sales Nos. 4-6 were included as a cross-check for the analysis of the first three sales. Sale prices for Comparables Nos. 4-6 ranged from \$148,000 to \$520,000 prior to adjustment, and \$724,358 to \$800,083 subsequent to adjustment. All of the sales occurred in the statutory or extended base period. The significant adjustments to the sales again consisted of date of sale, site size, living area square footage, basement, age, garage, detached

structure, off-grid characteristics, and location. Mr. Lickiss indicated that these three sales, once adjusted, further supported the concluded value of \$800,000.

Mr. Lickiss testified that the subject was indeed a unique property; however, he indicated that his sales were the best available and his adjustments were supportable in the market. Mr. Lickiss testified that, although his adjustments were excessive due to the characteristics of the property, they accounted for all of the differences in the physical characteristics between the subject and the comparables including access and off-grid characteristics, and resulted in a supportable conclusion of value. Relative to the averaging used and equalization model employed by Petitioner to conclude to value, Mr. Lickiss testified that simply using averages was improper appraisal technique, since this methodology does not account for differences in the multitude of physical and economic characteristics that might exist in the properties.

Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2014 valuation of the subject property was incorrect.

The Board agrees that the subject is a unique property with limited sale comparables to use for comparative purposes, and that the off-grid and access issues do impact market value. The Board concludes that the sales provided by Respondent in their market approach, although not optimal, are reasonable to use to compare to the subject. Given this conclusion, the question becomes whether Respondent made sufficient adjustments to adequately reflect the differences in the physical characteristics between the comparables and the subject, specifically in terms of off-grid characteristics, access, and location.

Colorado case law requires that “[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence. . .” *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). After careful consideration of the testimony and exhibits presented at the hearing, the Board concludes that Respondent’s adjustments to the sales, specifically Comparable Nos. 1 and 2, result in a reasonable degree of comparability to the subject and most accurately reflect the market value for the subject property. Although these sales necessitated large dollar adjustments ranging from a negative \$326,028 to a positive \$229,910 net, specifically in terms of off-grid characteristics, access, and location, Respondent did sufficiently support these adjustments through the testimony, pair sales analysis, time trend analysis, and regression analysis contained in Exhibit No. 1.

The Board further concurs with Respondent and concludes that merely averaging multiple sales prices does not result in a credible conclusion of market value, since this methodology clearly does not account for differences in the multitude of physical and economic characteristics that might exist in the properties. In addition, relative to the comparison of sales prices to assessed values (equalization spreadsheet) provided by Petitioner, the Board is able to consider this analysis since it is used as additional support once a value has been concluded through a market approach. However, the Board concludes, as noted above, that simply averaging values or percentages does not result in adequately supporting Petitioner’s conclusion derived from the analysis of the 55 qualifying sales.

**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 3rd day of December, 2014.

**BOARD OF ASSESSMENT APPEALS**

*MaryKay Kelley*

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MaryKay Kelley

*James R. Meurer*

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James R. Meurer

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

*Milla Lishchuk*  
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Milla Lishchuk