

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 68660

Petitioner:

**THE LAWRENCE M. HOLLOWAY FAMILY
TRUST,**

v.

Respondent:

GARFIELD COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 9, 2016, James R. Meurer and MaryKay Kelley presiding. Linda M. Holloway, agent, appeared on behalf of Petitioner. Respondent was represented by Janette Shute, Esq. Petitioner is protesting the 2015 actual value of the subject property.

Respondent objected to Petitioner's submission of written testimony. The Board accepted the document as an administrative convenience.

Subject property is described as follows:

**115 5th Street, Glenwood Springs, Colorado
Garfield County Schedule No. R041393**

The subject is a 1,988 square foot two-story residence with an unfinished basement. It was built in 1911 on a 27,000 square foot parcel in downtown Glenwood Springs. The parcel has been platted into nine residential lots of 3,000 square feet each (Lots 1 through 9). Lots 7, 8 and 9 contain the original homestead.

Respondent assigned an actual value of \$595,930 for tax year 2015, which is supported by an indicated value of \$740,000. Relying on the highest and best use analysis, Respondent valued separately the subject home as it sits on Lots 7, 8 and 9 and the remaining vacant lots, clustering them into pairs (Lots 1 & 2, Lots 3 & 4, and Lots 5 & 6) which represent three additional sites sufficiently large for residential development.

Petitioner requests that the property be valued as a single unit. Petitioner did not present any specific value or value range for the subject.

Petitioner argued that Respondent's highest and best use analysis is invalid. According to Petitioner, the subject should be valued as an improved 27,000 square foot property, not as an improved 9,000 square foot property (*e.g.*, subject home situated on Lots 7, 8 and 9) with the remaining six lots valued separately as vacant. Ms. Holloway presented court decisions arguing that adjoining lots, if owned by the same person, should be valued as a single property. In addition, Ms. Holloway cited several court cases in support of her argument that the Board should find in favor of the taxpayer if a dispute exists.

Further, Ms. Holloway discussed land values in the subject area. She presented Assessor's records displaying a list of 2015 actual values for residential land sorted by size. Addressing the theory of diminishing returns ("economies of scale" per Petitioner), she highlighted the last three properties on the list, one of them the subject. She concluded that the value for the subject's 27,000 square feet should fall between \$.44 and \$7.98 per square foot, specifically \$5.00 per square foot.

Ms. Holloway disagreed with the Assessor's methodology and indicated that she could not understand the Assessor's allocation of \$145,930 for the residence. Ms. Holloway argued that Respondent's witness violated appraisal practice by using vacant land comparisons for valuation of the subject property when the subject was classified as residential; vacant land and residential classifications are not the same.

Respondent's witness, Shannon Mazzei, Ad Valorem Appraiser for the Garfield County Assessor's Office, performed a highest and best use analysis for the subject's 27,000 square feet, which were legally platted as nine lots. According to Ms. Mazzei, the determination of highest and best use requires the analysis of whether the proposed use is physically possible, legally permissible, financially feasible and maximally productive. By using these four criteria for determining highest and best use, Respondent's witness concluded that the subject property's highest and best use is that of residential housing sites.

Ms. Mazzei presented a Sales Comparison Analysis for the subject residence on 9,000 square foot parcel (Lots 7, 8 and 9 at 3,000 square feet each). The sales ranged in price from \$239,000 to \$420,000. She made adjustments for time, condition, prime living and basement size, room count, and garages. Adjusted sale prices ranged from \$317,293 to \$441,140. She assigned greatest weight to Sales One (adjusted value of \$319,490) and Three (adjusted value of \$317,293) and concluded to an indicated value of \$320,000.

Ms. Mazzei then discussed the remaining six lots. She determined that two lots (3,000 square feet each) would be required to meet the town's requirement of 5,000 square feet for residential construction. Thus, she valued the remaining six lots in pairs: Lots 1 and 2 as vacant land, Lots 3 and 4 as vacant land, and Lots 5 and 6 as vacant land. She used the same comparable sales for each group, and adjustments were made for tap fees and location (two of the sales were located in Carbondale). She gave predominant weight to the Glenwood Springs sale (adjusted value of \$140,000) and concluded to a value for each pair at \$140,000.

Ms. Mazzei concluded to a value of \$320,000 for the improved parcel and \$140,000 for the three sets of vacant land parcels for a total value of \$740,000 for the property valued at its highest and best use.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2015.

Both acceptable appraisal practice and the Assessors Reference Library (ARL) require that properties be valued based on their highest and best use. ARL Volume 3 notes that "The requirement of valuing property at its highest and best use was affirmed by the Colorado Supreme Court in the *Board of Assessment Appeals, et al., v. Colorado Arlberg Club*, 762 P.2d 146 (Colo. 1998)". ARL, Volume 3, Page 2.3. In the *Arlberg Club* case, the court concluded that "reasonable future use is relevant to a property's current market value for tax assessment purposes." The court further noted "...our statute does not preclude consideration of future uses" and it quoted the American Institute of Real Estate Appraisers, referencing *The Appraisal of Real Estate* 33, 1983, 8th Edition, "In the market, the current value of a property is...based on what market participants perceive to be the future benefits of acquisition."

Reasonable future use is based on the actions and expectations of the market and is consistent with the highest and best use concept that requires the future use to be physically possible, legally permissible, financially feasible, and maximally productive.

The Board found Respondent's analysis of the subject's highest and best use persuasive. First, residential development of the subject's unimproved lots appears to be physically possible as all lots have street access; all are zoned residential and are located in downtown Glenwood Springs; and all have level topography with available public utilities. Second, single family or multi-family development of the subject lots is legally permissible in accordance with the City of Glenwood Springs' zoning requirements. And lastly, the high demand for housing in downtown Glenwood Springs dictate that residential development of the subject parcels is the most financially feasible and maximally productive use of the subject.

While Petitioner questioned Respondent's hypothetical approach to valuation, it is permissible in a highest and best analysis. See *Arberg Club*, "reasonable future use is relevant to a property's market value for tax purposes." 762 P.2d 146. The Board is persuaded the residential development is reasonable future use of the subject lots.

Petitioner's lot value analysis and conclusion is given little weight. Vacant residential lots are not valued by price per square foot, rather by comparison with other residential lots with adjustments for size, location, view, and other features.

Overall, the Board found Respondent's valuation analysis to be most convincing. The Board was persuaded by Respondent's selection of comparable sales and adjustments to those comparables.

Petitioner did not present sufficient probative evidence to support her assertions of error in Respondent's valuation of the subject property.

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).

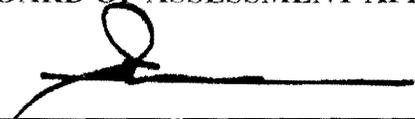
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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.

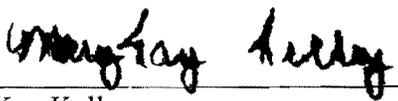
Section 39-8-108(2), C.R.S.

DATED and MAILED this 24th day of June, 2016.

BOARD OF ASSESSMENT APPEALS



James R. Meurer



MaryKay Kelley

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



Milla Lishchuk

