

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>KENT HECTOR,</p> <p>v.</p> <p>Respondent:</p> <p>SAN JUAN COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 69325</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 19, 2017, Debra A. Baumbach and MaryKay Kelley presiding. Petitioner was represented by Barbara R. Butler, Esq. Respondent was represented by Paul C. Sunderland, Esq. Petitioner is protesting the 2016 actual value of the subject property.

Subject property is described as follows:

**Lots 13-22, Block 1, Taylor Addition, Silverton, Colorado
San Juan County Schedule No. 4829172010006**

The subject property is a vacant 25,000-square foot residential parcel located on the north edge of Silverton. The site slopes to the south, offering a good view of the town. It lies within an avalanche hazard area (“red” areas prohibit development; “blue” areas carry less hazard and can be petitioned for development). The parcel can legally be developed into three residential lots if infrastructure issues can be satisfactorily resolved.

Respondent assigned an actual value of \$150,000 for tax year 2016. Petitioner is requesting a value of \$55,000.

Respondent made an argument that there was no basis for adjusting the subject’s 2016 value – which is the intervening year value from its 2015 base year value. Respondent cited Section 39-1-104(11)(b)(I), C.R.S. and stated that there was no unusual condition which would justify a change in value from 2015 as the subject’s condition has not changed between January 1, 2015 and January 1, 2016. Respondent’s argument has been previously considered and rejected by the Colorado courts.

Regardless of lack of any “unusual condition,” a taxpayer has a statutory right to challenge a property tax valuation for each tax year, including intervening year. See *Weingarten v. Bd. of Assessment Appeals*, 876 P.2d 118 (Colo. App. 1994).

Petitioner testified that his father purchased the subject parcel fifty years ago. He listed it for a period of ten months, which included a price reduction from \$55,000 to \$39,000. Without any interest in the property at those prices, he argued that Respondent’s value of \$150,000 was too high.

Petitioner’s witness, Lisa M. Adair, Professional Engineer at Engineer Mountain, Inc., estimated a preliminary cost of infrastructure (water, sewer, roads) to be \$302,720. A permit would likely be granted for development in the blue avalanche zone.

Petitioner’s witness, Jim Lindaman, Realtor, testified that the town researched a solution for a water supply in 2007. It concluded that a special improvement district to construct water tanks above 10,000 feet would cost an estimated \$3,500,000, which the town could not afford, and nothing has been done to date.

Respondent’s witness, Kimberly Buck, San Juan County Assessor and Ad Valorem Appraiser, discussed the appraisal prepared for the subject’s 2015 tax year appeal; its author, Maggie Love, was not present at the hearing. Ms. Buck testified that Ms. Love considered eight sales most comparable to the subject for a variety of reasons and concluded that Lots 37 and 38 were most similar due to their sloping terrain overlooking the town. Sale 37 (7,500 square feet) sold for \$180,000 and was located 200 feet south of the subject and had both access and utilities. Lot 38 (5,625 square feet) sold for \$150,000 and had no utilities. Ms. Love gave more weight to Lot 38 because it, like the subject, required the extension of utilities. She concluded to a value of \$150,000.

Ms. Buck addressed Mr. Hector’s testimony about his ten-month listing of the subject property and his price reduction from \$55,000 to \$39,000, which attracted no offers. Mr. Hector argued that Ms. Love should have made adjustments in her appraisal for long marketing times and value decline. Ms. Buck identified Ms. Love’s discussion of market conditions on page 26 of her appraisal as well as her conclusion that time adjustments could not be supported. Ms. Buck also noted some very lengthy marketing times, the longest MLS listing being six and one-half years. Many of these listings resulted in sales. She did not consider time on the market to be a valid indicator of value. Additionally, the State Auditor has not approved time adjustments for San Juan County-assessed valuations.

Ms. Buck, in response to Petitioner’s argument that Lot 38’s sale was a non-arm’s-length transaction, testified that she has communicated with both parties and is convinced otherwise.

Ms. Buck discussed the issue of infrastructure or lack thereof, noting five vacant sales on the south side of town in the floodway next to the Las Animas River. She noted that these sales occurred despite buyers having had knowledge of infrastructure difficulties. Subsequently, some have alley access, and infrastructure has been put into some alleys. Ms. Love reportedly did not include these five sales as comparable sales because of their access issues.

Respondent's witness, William Tookey, Town of Silverton's Land Administrator, discussed the town's design standards, which he feels should include a practical approach or "informal standard" with regard to development, especially for hillside and riverside locations. He considered alley access reasonable and favored water and sewer extensions to individual improvements along with signed agreements that standards (extensions, for example) might be required in the future. Even if required to build a full extension, he described a reimbursement scenario in which future owners would reimburse expenses paid by the original owner.

Petitioner provided insufficient probative evidence and testimony to convince the Board that the subject property was incorrectly valued for tax year 2016.

The Board notes the absence of two witnesses critical to the 2015 appeal; Cherrie A. Lum, Certified Residential Appraiser for Petitioner, and Maggie Love, Certified General Appraiser for Respondent. Neither of these was available for testimony or cross examination by the parties in the appeal.

Predominant issues are location (terrain, view, and avalanche exposure), infrastructure, the scarcity of sales, and marketing time. The Board finds Respondent's probative testimony and evidence to be well supported. It finds Respondent's selection of comparable sales to be representative of the subject and adjustments supported. The Board is persuaded that Petitioner did not meet its burden of proof.

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 28th day of July, 2017.

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.

Milla Lishchuk

Milla Lishchuk

