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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>SUNSHINEMESA, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>SAN MIGUEL COUNTY BOARD OF EQUALIZATION.</p> | <p>Docket No.: 70520</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on December 11, 2017, Diane M. DeVries and James R. Meurer presiding. Petitioner was represented by Mark Halper, agent. Respondent was represented by Steven Zwick, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Subject property is described as follows:

**3860 Sunshine Mesa Rd. Telluride, Colorado
San Miguel County Schedule No. R104933590**

The subject is a log frame mountain cabin located in the Sunshine Mesa submarket, approximately seven miles from the town of Telluride. According to information provided by San Miguel County, the house contains 1,368 square feet, and is in overall fair condition. There is no electricity or water, and heat is via a propane heater. The property includes a total of approximately 47 acres, one-half acre of which is classified as residential, and the remainder is classified as agricultural.

Respondent assigned an actual value of \$176,597 for tax year 2017, which is supported by an appraised value of \$176,597. Petitioner is requesting a value of \$100,000.

Petitioner's agent, Mr. Mark Halper, argued that the portion of the subject parcel classified as residential land on which residential improvement is located should be reduced from half an acre to quarter of an acre. According to Mr. Halper, the assignment of one-half acre to the residential portion of the subject was arbitrarily allocated by Respondent, was a violation of

House Bill 11-1146, and should be reduced to one-quarter acre with a corresponding decrease in value. Mr. Halper did not present any evidence in support of his contention that the size of the residential portion of the subject should be reduced to a quarter of an acre. His only support for the downward size adjustment was the contention that because other properties in the Sunshine Mesa area received downward size adjustments to the residential portions of the parcels otherwise classified as agricultural, the subject parcel also should have received a similar downward adjustment.

Mr. Harper also testified that, in his opinion, the comparable sales used by Respondent in Respondent's market approach were significantly dissimilar to the subject property.

Relative to the valuation provided by the county, Respondent's witness, Mr. Jeff Marsoun, a Certified Residential Appraiser with the San Miguel Assessor's Office, developed a market approach and presented three improved sales to support his opinion of value for one-half acre of the subject that contains residential improvements and is classified as residential land. All of the sales were considered to be located in generally similar locations by Mr. Marsoun, and sale prices after adjustment for location ranged from \$183,375 to \$304,000 prior to other adjustments, and \$180,920 to \$215,590 subsequent to adjustment. The significant adjustments to the sales consisted of location, acreage, view, condition, and square footage. With weight to all of the sales, Mr. Marsoun then reconciled the adjusted sales to conclude to his final value of \$176,597 for the subject.

As a cross-check for the concluded value of \$176,597, Mr. Marsoun analyzed four sales to support a value for the residential land envelope. The sales prices for these comparables after adjustment for location ranged from \$87,000 to \$225,000 prior to other adjustments and \$125,200 to \$228,750 subsequent to adjustment. Major adjustments to the sales consisted of location, acreage, view, and privacy. Mr. Marsoun concluded that the analysis of the sales for the residential envelope bracketed the previously concluded value of \$176,597.

The value allocation resulting from Respondent's analysis was as follows:

| Component | Concluded Value |
|--------------------------------------|------------------|
| Land (0.5 acre residential envelope) | \$119,999.51 |
| Land (Agricultural 46.5 acres) | \$4,271.49 |
| Residential Improvements | \$52,326.00 |
| Total | \$176,597 |

Further, Mr. Marsoun testified to the methodology that he uses in assigning residential classification to portions of parcels otherwise classified as agricultural land on which residential improvements are located. Mr. Marsoun stated that his methodology was reviewed and approved by the Department of Property Taxation. He testified that according to his methodology, which was developed in accordance with HB 11-1146 and approved by the DPT, the residential portion of the subject parcel should have been at one acre. Mr. Marsoun pointed out that only a half of an acre of Petitioner's 47-acre parcel has been classified as residential land (which was done by an Arbitrator in 2013), and additional reduction to a quarter of an acre cannot be supported.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2017.

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). The Board finds that Petitioner failed to meet this burden. While Respondent presented a market approach in support of Respondent’s value conclusion for the subject, Petitioner did not present any credible evidence or testimony to support Petitioner’s allegations of error pertaining to Respondent’s valuation.

Similarly, the burden of proof in BAA proceedings is on the taxpayer to establish the basis for any reclassification claims concerning the subject property. *Home Depot USA, Inc. v. Pueblo Cty. Bd. of Comm’rs*, 50 P.3d 916, 920 (Colo. App. 2002). Again, the Board finds that Petitioner failed to meet this burden. While Petitioner argued that the residential portion of the subject parcel should be reduced from half an acre to a quarter of an acre, Petitioner did not produce any evidence in support of such a reduction.

Finally, the Board did not find persuasive Petitioner’s argument that Respondent’s methodology in determining the size of residential land violated the directives of Senate Bill 11-1146. Petitioner presented no probative evidence to support Petitioner’s argument concerning Respondent’s alleged unlawful actions.

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 26th day of December.

BOARD OF ASSESSMENT APPEALS



Diane M. DeVries

Diane M. DeVries

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

Milla Lishchuk

Milla Lishchuk

James R. Meurer

James R. Meurer