

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 70930

Petitioner:

JAMES A. GORDON QPR TRUST,

v.

Respondent:

PITKIN COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on September 24, 2018, Gregg Near and Debra A. Baumbach presiding. Petitioner was represented by Gregory S. Gordon, Esq. Respondent was represented by Richard Y. Neiley III, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Petitioner's Exhibit 1 and Respondent's Exhibit A were admitted into evidence.

Subject property is described as follows:

**Owl Creek Ranch P.U.D., Lot 3
Aspen, CO
Pitkin County Schedule No: R012301**

Petitioner is requesting an actual value of \$3,810,000 for the subject property for tax year 2017. Respondent assigned a value of \$6,000,000 for the subject property for tax year 2017.

Evidence Presented to the Board

The property is located in the Owl Creek Ranch, P.U.D. Subdivision consisting of ten agricultural/residential sites zoned for small scale agricultural activity and large residential development. The topography is mainly level consisting of a combination of meadow and fields. The property has east facing views of Aspen Mountain, Independence Pass, Buttermilk and Aspen Highlands.

Owl Creek Ranch, P.U.D., Lot 3 contains 69.22 acres with a main residence consisting of 11,306 square feet built in 1999. There is also a 648 square foot detached heated garage, a 677 square foot heated attached garage, and an 844 square foot guest house with a 1,076 heated garage.

Out of the total 69.22 acres, Respondent classified 67.77 acres as “agricultural land” and the remaining two acres underlying the residence and the guest house as “residential land.” The parties stipulated to the 2017 value of the residential improvements of \$11,936,300 as well as 2017 value of 67.77 acres of agricultural land of \$92,900. The parties dispute the value of the remaining two acres that Respondent classified as “residential land.”

Petitioner called Ms. Scott Giddings, a Licensed Residential Appraiser for the Pitkin County Assessor’s Office as a witness. Ms. Giddings testified that her valuation analysis was completed in accordance with House Bill 11-1146 (“HB 11-1146”). HB 11-1146 states that if the residential improvement is not “integral to an agricultural operation” conducted on the land, up to two acres upon which the residential improvement is located is excluded from agricultural classification. Any such excluded land is to be classified as “residential land” for property tax purposes, but the remainder of the property would retain its agricultural classification.

Next, Petitioner called Mr. David Ritter MNAA, owner of The Appraisal Office-Aspen Ltd., as a witness. Mr. Ritter presented four comparable land sales used by Respondent and one additional land sale that he selected. The additional sale was described as 1061 Two Creeks Rd, Lot 41 in Two Creeks Subdivision that sold in December 2014 for \$3,500,000. The sales ranged in sale price from \$3,500,000 to \$6,400,000 and in size from 1.16 acres to 5.52 acres. Adjustments were made for size, ski access, and Transferable Development Rights (“DTR”). Mr. Ritter concluded to a reconciled value of \$3,810,000.

According to Mr. Ritter, Respondent’s sales were incorrectly adjusted resulting in overvaluation of the subject. Mr. Ritter maintained Respondent incorrectly applied positive adjustments to Sales 1 and 2 for differences in site size and Respondent’s adjustments made for view, privacy and location appear to be duplicative.

Petitioner is requesting an actual value of \$3,810,000 for the subject property for tax year 2017.

Respondent’s witness Ms. Scott Giddings was recalled to the stand. Ms. Giddings presented four comparable sales ranging in sale prices from \$3,900,000 to \$6,400,000 and in size from 2.06 acres to 5.52 acres. After adjustments were made, the sales ranged from \$5,460,000 to \$8,960,000. Ms. Giddings stated that she applied percentage adjustments to the sales based on mass appraisal methodology. Ms. Giddings concluded to a value of \$6,000,000 for the subject property.

Respondent called Mr. Lawrence Fite, Chief Appraiser with Pitkin County Assessor’s Office, as the next witness. Mr. Fite reiterated that land considered non-integral to agricultural operation is to be classified as residential and valued using the market approach comparing sales of similarly sized vacant residential building sites. Adjustments are made for differences in property characteristics taking into consideration any surrounding excess land that might affect the value. Mr.

Fite contended that the primary difference between Mr. Ritter's analysis and Ms. Giddings' analysis is that Mr. Ritter only considered two acres independently of the surrounding excess land area under the same ownership. Mr. Fite argued that when potential buyers are purchasing a building site, the surrounding land area plays a part in their decision and the additional excess land area contributes value to the entire site.

In response to Petitioner's questions, Mr. Fite stated that, to calculate the land value, he performed an analysis as if the entire acreage was valued as residential. The improvement value was then extracted to derive a land value.

Respondent requested the Board to uphold assigned actual value of \$6,000,000 for the subject property for tax year 2017.

The Board's Findings

In a *de novo* BAA proceeding, a taxpayer has the burden of proof to establish, by a preponderance of the evidence, that the challenged valuation is incorrect. See *Bd. Of Assessment Appeals v. Sampson*, 105 P.3d 198, 202, 208 (Colo.2005). After considering all the testimony and evidence the Board concludes Petitioner met its burden to prove that the subject property was valued incorrectly.

The market approach is the process of deriving a value indication for the subject property being appraised by adjusting the sales prices of the comparable properties based on relevant, market-derived elements of comparison. In the case of non-integral residential land within an agricultural parcel, assessors are required to use comparable sales of similarly sized residential parcels to value the non-integral portion. ARL, Vol.3, at 5.20.

There were several items that call Respondent's value into question. The Board was not convinced of the adjustments applied by Respondent's witness. All adjustments applied to the comparable sales were upward with total adjustments from 40% to 60% calling into question the actual similarity of the sales. The Board also finds the adjustments applied to the comparable sales for land size/excess land unconvincing. Sale No. 1, a 3.57-acre parcel, is adjusted upward 10% for this feature yet Sale No. 4, a smaller 3.06-acre parcel is adjusted upward 20%, with no clarification for this significant difference in adjustment.

Respondent stated in both the report and in testimony that purchasers of land in the Pitkin County market are primarily interested in purchase of a building site and these purchasers give less credence to other factors. This appears inconsistent with the number of significant adjustments made by Respondent's appraiser for these other factors.

The Board has considered Respondent's comparable sales without the numerous adjustments applied by the appraiser. For example, Sale No. 1 contains 3.57 acres yielding a unit value of \$1,106,442/acre. A grid of each of the sales on a per-acre analysis suggests a very narrow range:

Sale Price	Acres	\$ per acre
\$3,950,000	3.57	\$1,106,442
\$6,400,000	5.52	\$1,159,420
\$4,000,000	2.06	\$1,941,757
\$3,900,000	3.06	\$1,274,510

The comparable sales produce a value indication for a 2-acre site from \$2,212,884 to \$3,883,514.

The Board concludes that Respondent’s appraisal and appraiser are not convincing. The subject has been overvalued for a number of reasons including double adjusting, inappropriate sale comparables, adjustments based solely upon experience applied to comparable sales not sufficiently similar. The process resulted in overly large upward adjustments for all the sales reported.

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

ORDER:

Respondent is ordered to reduce the 2017 actual value of the subject property to \$3,810,000.

The Pitkin County Assessor is directed to change their records accordingly.

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, 2018.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

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

Milla Lishchuk

Milla Lishchuk

Gregg Near

Gregg Near

