

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MEGAN NORTHWAY,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 71855</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 7, 2018, Debra A. Baumbach and Cherice Kjosness presiding. Petitioner was represented by Harmon W. Zuckerman, Esq. Respondent was represented by Michael A. Koertje, Esq. Petitioner is protesting the 2017 actual value of the subject property.

At the commencement of the hearing, Petitioner requested to withdraw the appeal of a parcel at 145 Lee Hill Drive from consideration. Based on Petitioner’s request, the hearing proceeded on the merits of the 2017 valuation of the remaining two vacant contiguous residential parcels at 115 and 135 Lee Hill Drive. Petitioner’s Exhibits 2, 3, 6, 7 and 8 were admitted. Respondent’s Exhibits A, B, D, E, F and G were admitted. Mr. William B. Kamin, Certified General Appraiser and Ricardo Galvan, Certified Residential Appraiser, were admitted as experts.

Subject property is described as follows:

115 and 135 Lee Hill Drive, Boulder, CO
Schedule Nos: R0509799 and R0509798, respectively

The subject property consists of two vacant lots in the Wineglass Ranch Subdivision, at the far northwest edge of the City Limits of Boulder and at the base of the foothills. The topography slopes from west to east, and Boulder Open Space abuts the subject lots on the north and south. The lots are each just over seven acres in size and have been granted the contiguous residential classification in conjunction with the improved parcel on 145 Lee Hill Road. The zoning is agricultural. Water and electric utilities are available at the border of the sites, and dirt access roads have been cut from Lee Hill Road to each lot. The prior owner placed a number of deed restrictions

on the property before the platting of the subdivision, one of which prohibits the further subdivision of these lots. The City of Boulder “blue line,” which restricts where city utilities can be extended, cuts through both of these lots, limiting the building envelopes to the lower elevations.

Petitioner is requesting an actual value of \$1,460,000 for each of subject lots for tax year 2017. Respondent assigned a value of \$2,890,000 for 115 Lee Hill Road and \$2,854,000 for 135 Lee Hill Road for tax year 2017, but is recommending a reduction to 135 Lee Hill Rd to \$2,760,000.

Ms. Northway testified that she purchased the two lots for \$2,100,000 in March of 2013. For title purposes, the sale price was apportioned at \$1,050,000 for each lot. These lots are not in a flood plain, but the heavy rains that occurred in September of that year did some damage to the soil surface. Some scarring can still be seen in Respondent’s photographs. She testified that the current valuations assigned to these parcels are too high, and believes the county changed the method used to value these properties for 2017. She stated that she is not an appraiser or real estate agent, but that she has been watching the market in Boulder and has a layman’s knowledge of market activity. In addition, these lots have been actively marketed, but no inquiries or offers have been made. She believes the deed restrictions which prohibit further subdivision of the parcels severely restrict the potential purchasers for these lots. The two lots that were sold on the east side of the subdivision were sold to individuals who built very large, estate type homes with outbuildings and amenities such as a swimming pool.

Petitioner’s witness, William B. Kamin, presented what he described as a Restricted Appraisal Report. It is in letter form and was admitted as Petitioner’s Exhibit 8. Mr. Kamin did not provide a Sales Comparison Approach in his Exhibit, but did suggest five alternative sales to those used by Respondent’s appraiser. He described each sold property and his opinion of the comparability to the subject lots. These sales ranged from 1.04 to 10 acres. Some were located outside the City of Boulder. He concluded to a range of \$1,000,000 to \$1,500,000 for each of the subject lots.

Mr. Kamin stated both in his written document and in testimony that Respondent’s appraiser did not properly consider highest and best use when selecting comparable sales. All three of the sold properties presented by Respondent were capable of further subdivision, and, with the exception of 2300 Iris, all were subsequently developed into 4 to 19 residences. The final purchaser of the Iris property was a very wealthy person who out-bid all the developers to have a large acreage in mid-town Boulder on which to build his mansion/estate. In addition, two of the properties had additional water rights included in the sales price which were ignored by the appraiser. Mr. Kamin testified that he had been appraising in Boulder and surrounding areas for 42 years. It was his contention that properties in “transition areas” have a significantly lower value than properties in mid-Boulder, especially those closer to downtown which bring a premium. He described the “transition area” as those properties on main access roads from the city to the foothills and mountain areas. He gave several paired sale examples to support this contention. He cited increased traffic as one of the negative value factors.

Petitioner is requesting a 2017 actual value of \$1,460,000 for each of the subject properties.

Respondent presented values of \$3,600,000 and \$2,760,000 for the subject properties based on the market approach.

Respondent presented 3 comparable sales ranging in sale price from \$1,250,000 to \$4,900,000 and in size from 1.71 to 6.35 acres (74,703 to 276,781 square feet). After adjustments were made, the sales ranged from \$13.28 to \$24.07 per square foot. The appraiser correlated to a value of \$19.00 per square foot for the subject properties.

Respondent's witness, Mr. Ricardo Galvan, testified that he walked the subject properties with the owner and her attorney in August. He noted that the subject properties were adjacent to open space property on the north and south borders and that the views were good from the higher elevations. He confirmed that these properties were unique and comparables were very difficult to find. He believes the potential purchasers would be similar to those that purchased the two lots at the east end of the subdivision: builders of large estate type properties. He selected 3 sales, two of which are in the 18-month base period and one from the 24-month period. All three are in the city limits of Boulder which he considered to be essential. The only adjustment made to all the comparable sales was an upward \$150,000 for not being adjacent to open space. When asked how he determined the amount of the adjustment, he stated it was from market regression analysis. He did note that the "blue line" limited the building envelopes of the two lots, so he calculated the areas that were inside that barrier and applied the correlated \$19.00 per square foot to those areas to obtain the final value.

In cross examination, Mr. Galvan testified that he did not make any upward adjustments for location near to a park or near to downtown or any neighborhood nodes of services such as the one on North Broadway. He further testified that he didn't believe that the flood "scarring" on the lots affected value. When questioned about Highest and Best Use, he testified that he considered it but that assessment values depend on the actual use, no future use is considered. He testified that he only became aware that the City of Boulder had purchased the development rights on the subject properties when Petitioner's attorney provided that information. He made no adjustment for the development rights or the water rights that were included in two of the comparables.

Respondent assigned an actual value of \$2,890,000 to the subject property at 115 Lee Hill Dr. for tax year 2017. Respondent is recommending a reduction for 135 Lee Hill Drive to \$2,760,000 for tax year 2017.

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

The Board agrees with Petitioner's witness that Respondent did not properly consider the Highest and Best Use of the subject properties when selecting comparable sales. The use of non-comparable sales resulted in a significant overvaluation.

The Board was dismayed by Mr. Galvan's testimony that "no future use is considered" in ad valorem valuations. This is not correct. The reasonable future use of real property is an element of its fair market value under its technical definition as well as its common law interpretation in

Colorado. *Reiber v. Park Cnty. Bd. of Equal.*, 14CA6 (Colo. App. 2014). Though speculative future uses cannot be considered, reasonable future use is relevant to a property's current market value for tax assessment purposes. *Coyle v. Colorado State Bd. of Assmnt. Appeals*, 13CA0907 (Colo. App. 2014).

The comparables selected by Mr. Galvan are not substitutes in the market for the subject properties. If there were no sufficiently comparable sales in the city limits of Boulder, then sales from other areas should have been used and a location adjustment developed. In addition, the appraiser has made an unsupported determination that ditch water rights carry no value in a sales transaction. The fact that water rights are not separately assessed does not mean they automatically have no market value. Even if comparability could be argued, Mr. Galvan failed to perform the necessary locational analysis to account for differences between the subject's location at the edge of the city, and the sold properties' locations much nearer to downtown and to service nodes which are well recognized value influences in the Boulder residential market.

Petitioner's appraisal witness did not conclude to a value for the subject properties. The Board therefore used the sale of the subject properties, which sold within the 5-year base period. Using the time adjustment table in Mr. Galvan's reports, the Board calculated the time adjusted sale prices for the subject properties as follows:

$$\$1.5 \text{ million times } 1.3492 = 1.42 \text{ Million}$$

The Board concluded that the 2017 actual value of the subject property should be reduced to \$1,420,000 for each of the subject lots.

ORDER:

Respondent is ordered to reduce the 2017 actual value of the subject properties to \$1,420,000 for each of the two subject properties.

The Boulder 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.

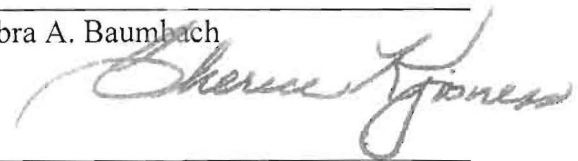
Section 39-8-108(2), C.R.S.

DATED and MAILED this 20th day of September, 2018.

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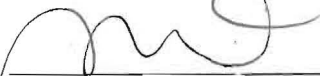


Debra A. Baumbach



Cherice Kjosness

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



Milla Lishchuk