

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>DENICE C. REICH,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PITKIN COUNTY BOARD OF EQUALIZATION.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Denice C. Reich Address: 1873 South Bellaire #700 Denver, CO 80222</p> <p>Phone Number: (303) 759-6644 E-mail: Attorney Reg. No.:</p>	<p><b>Docket Number: 39297</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on March 13, 2002, Karen E. Hart and Judee Nuechter, presiding. Petitioner appeared pro se via teleconference. Respondent was represented by John M. Ely, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**375 North Spring Street, Aspen, Colorado, (Pitkin County Schedule Number R-005550, Parcel Number 2737 073 10 001)**

Petitioner is protesting the 2001 actual value of the subject property, a single-family residential site located at 375 North Spring Street, Aspen Colorado. The site was vacant as of June 1, 2000 and was comprised of approximately 22,000 square feet. Zoning was R-30 Residential.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the valuation of the subject property is too high based on the 35 foot setback from the river that was required by the City of Aspen. Additional limitations include the limited access to the property that was created by the abandonment of Francis Street for the purpose of a drainage swale that was required by the City Engineer. Due to the restrictions on her property, the Petitioner believes that her property has been overvalued. The property is located on the Roaring Fork River.

### **Respondent:**

Respondent contends that the subject site has been properly valued for the base time period using the market approach and using six sales from the same immediate neighborhood known as Oklahoma Flats.

## **FINDINGS OF FACT:**

1. Ms. Denice C. Reich, Petitioner, presented the appeal on her own behalf by telephone conference call.
2. Petitioner presented an indicated value of \$1,500,000.00 for the subject property.
3. Petitioner presented one comparable sale with no adjustments. The sale price was indicated by Petitioner as \$2,000,000.00 and was located at 855 Bay Street.
4. Petitioner testified that Sale 3 of Respondent's appraisal report is 855 Bay Street and is within one block of the subject property. The property on Bay Street has a city easement going through the property. This property also has superior mountain views as compared to the subject property. There was a smaller dwelling on the site that was demolished after the sale. Ms. Reich can build a 4,800 square foot dwelling without a basement on her lot based on the FAR (Floor Area Ratio) requirements set by the City of Aspen. All of the other lots within Oklahoma Flats have a larger FAR allowed than the subject property.
5. Ms. Reich testified that she is the only owner in Oklahoma Flats that cannot have a front facing garage on her lot per city requirements. This factor also impacts the value of her property.
6. Ms. Reich testified that the Aspen city engineering department required a drainage ditch through her property. She feels that the regulations surrounding that drainage ditch are greater for her than for other residents within the neighborhood. She cannot build a duplex on her property. The other residents of Oklahoma Flats have 10-foot side yard setbacks while she has a 15-foot setback. The witness testified that the sales in Oklahoma Flats used by the Respondent are not similar to her property since they do not have similar building stipulations.

7. Under cross-examination, Ms. Reich testified that the property at 855 Bay Street should have a higher value than her property due to the level of improvements allowed by the City of Aspen. Ms. Reich testified that the buyer of 855 Bay Street looked at her property to purchase, but could not build a large enough dwelling or have a basement on her site, so he bought the Bay Street property. A consideration should be given her property due to the gross living area allowed based on city regulations when compared to Sale 3 and the other lots within the neighborhood.

8. Ms. Reich testified that the property at 855 Bay Street has superior views of the mountains whereas her property has a view of the performing arts tent in Aspen.

9. Petitioner is requesting a 2001 actual value of \$1,500,000.00 for the subject property.

10. Respondent's witness, Mr. Lawrence C. Fite, a Certified General Appraiser with the Pitkin County Assessor's Office, presented an indicated value of \$2,500,000.00 for the subject property, based on the market approach.

11. Respondent's witness presented 8 comparable sales ranging in sales price from \$1,380,000.00 to \$5,223,000.00 and having a site size from 10,352 square feet to 1.46 acres. After adjustments were made, the sales ranged from \$2,332,400.00 to \$3,020,250.00.

12. Mr. Fite testified that the subject property existed as a vacant parcel on June 30, 2000. The site is flat in contour and fronts to the Roaring Fork River. The subject property is just outside the central area of Aspen. Oklahoma Flats is a residential area although it has not been formally platted as a subdivision. There are ten to twelve parcels and it is an older area that has seen the majority of original homes purchased and then demolished in order to construct larger new homes. Access from the subject's neighborhood to the downtown area is easy via a pedestrian bridge that crosses the Roaring Fork River.

13. Respondent's witness testified that the Highest and Best Use of the subject property is improved with a residential structure up to 4,800 square feet as allowed by FAR as determined by the City of Aspen.

14. Mr. Fite testified that Sale 1 was the adjacent lot to the subject property and sold in 1995 for \$1,450,000.00. This sale is outside the base period but was used in the Respondent's report to show the historical sequence of sales in the subject's neighborhood and to show a perspective for values in the neighborhood. Sales 2 and 4 are the same property, which sold first in 1998 with a small cabin that was subsequently removed and a new luxury home was built. Sale 4 is the new luxury home, which sold in November 1999 for \$4,825,000.00. Sale 3 is located at the end of the street from the subject and is a larger size parcel, although a large portion of that lot is too steep to be developed. The Respondent's witness presented a minus \$500,000.00 adjustment to this sale based on the ability of the owner to build a larger dwelling. A pedestrian path crosses the site of Sale 3 to within 10 feet of the dwelling, which the Respondent considered as a negative attribute and assigned a minus \$500,000.00 adjustment for the pedestrian path.

15. The Respondent's witness testified that an adjustment for the allowable size of any proposed improvements was subjective and was not based on a per square foot adjustment due to a lack of data. His adjustments were based on his judgment of the attributable value of the larger FAR's allowed by the city.

16. Mr. Fite testified that the time adjustment for the valuation period was the strongest in the history of Aspen for the later months nearest June 2000. The time adjustment was more conservative in sales nearer the beginning of the base period. An adjustment of 1 percent per month is a typical time adjustment for the City of Aspen.

17. Under cross-examination, the Respondent's witness testified that he assigned an adjustment to Sale 3 for the pedestrian path easement, but not for differences in views between the sale and the subject property. Mr. Fite testified that although the subject property has a view of a four-plex property with numerous autos parked on the street, he did not consider it inferior because a homeowner could shield that view for relief, whereas the property on Bay Street could not place a fence or other shield between the pedestrian path and the dwelling. The mountain views were considered for the subject property and for the property on Bay Street and determined to not be drastically different. The John Denver Memorial Park is across the river from the subject property with open views to the west. Mr. Fite considered the views to be comparable.

18. Respondent assigned an actual value of \$2,000,000.00 to the subject property for tax year 2001.

## **CONCLUSIONS:**

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2001. Respondent's witness presented a well-organized and well-supported appraisal report.

2. The Board agrees that the Floor Area Ratio that is allowed for each property is important in determining value. However, the Board was convinced that the Respondent's witness correctly applied adjustments to the comparable sales in regards to the smaller Floor Area Ratio (FAR) allowed on the subject property. After adjustments were made to the comparable sales, the adjusted values of all eight of the sales indicated values above the assigned value of the subject property.

3. The Board was not convinced that the overall views of the subject property were substantially inferior to the views of the comparable sales or that stronger adjustments for views were warranted.

4. Although the Petitioner did present one comparable sale to the Board, no adjustments were made to this sale. The Respondent applied appropriate adjustments for Floor Area Ratio, time adjustments, the subject's superior river frontage, and the building improvements to each of the eight sales presented.

5. After careful consideration of all the evidence and testimony presented, the Board affirms Respondent's assigned value of \$2,000,000.00.

**ORDER:**

The petition is denied.

**APPEAL:**

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

**DATED and MAILED** this 25<sup>th</sup> day of April, 2002.

**BOARD OF ASSESSMENT APPEALS**

*Karen E Hart*  
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Karen E. Hart

*Judee Nuechter*  
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Judee Nuechter

This decision was put on the record

APR 24 2002

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

*Diane Von Dollen*  
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Diane Von Dollen

