

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>JUSTINE R. KIRK,</p> <p>v.</p> <p>Respondent:</p> <p>PITKIN COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Justine R. Kirk Address: P.O. Box 958 Aspen, Colorado 81612 Phone Number: (970) 925-8536</p>	<p>Docket Number: 41833</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 16, 2004, Debra A. Baumbach and Rebecca Hawkins presiding. Petitioner appeared pro se. Respondent was represented by Christopher G. Seldin, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**59 Magnifico Road, Aspen, Colorado
(Pitkin County Schedule No. R003179)**

Petitioner is protesting the 2003 actual value of the subject property, a single-family residence with 3,353 square feet, originally built in 1959. An addition in the mid 1970's expanded the living room and dining room. In the early 1990's a two-car garage with a second story studio/office was added. There is a caretaker/rental apartment with a private entrance. A mountain view exists from both the main and lower floors. The .78-acre site is level to sloping.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been improperly valued. Sufficient consideration was not given the site size, floor area ratio, age and quality of the improvement.

Respondent:

Respondent contends that the property has been correctly valued based on the market approach.

FINDINGS OF FACT:

1. Justine R. Kirk, Petitioner, presented the appeal on her own behalf.
2. Based on the market approach, Petitioner presented an indicated value of \$1,500,000.00 for the subject property.
3. Petitioner presented nine comparable sales ranging in sales price from \$1,250,000.00 to \$3,325,000.00 and in size from 1,800 to 5,550 square feet. No adjustments were made to Petitioner's comparable sales.
4. Ms. Kirk testified that land size substantially affects home values. The maximum square footage of the dwelling is determined by subtracting any road easements from the lot size and multiplying by 0.13 to derive the floor area ratio (FAR). Pitkin County, with the exception of the Pitkin Green and Red Mountain subdivisions, has a maximum FAR limit of 5,570 square feet.
5. Ms. Kirk is concerned that the assigned value of the subject property reflects the total site size of 34,160 square feet for calculating development rights. The 8,215 square foot road easement should be subtracted from the site size. The resulting land available for development is 25,946 square feet or approximately one-half acre. The subject site is limited to a maximum dwelling size of 3,372 square feet. Respondent's witness incorrectly compared the subject to properties that have greater development potential. The subject should be compared to homes older in year of construction and smaller in FAR.
6. Ms. Kirk testified that Respondent's Exhibit 2 contains errors. Respondent indicates that the subject has five bedrooms; however, the fifth "bedroom" is used as a study, since there is no closet in the room. The subject property has four bedrooms and three and one-half baths. She reviewed the sales contained in Respondent's Exhibit 2 and believes they are far superior to the subject property.

7. During questions from the Board, Ms. Kirk testified that she selected many of her comparable sales based on lot size and FAR. The age and quality of all of the sales are superior to the subject property. The subject property has the smallest site with the lowest allowable FAR. The dwelling at 1033 Willoughby was built on two lots so a larger structure could be built. The comparable sale at 161 Bennett Bench is newer than the subject property, has a beautiful view and is located in the Red Mountain subdivision. The comparable sale at 123 Cottonwood cannot be compared to the subject as it was custom built and it shares a road with another dwelling. The sale at 294 Draw Drive does not qualify as a tear down, therefore it does not compare to the subject dwelling. She believes the subject property was compared to newer homes on larger lots that sell for more money.

8. Petitioner is requesting a 2003 actual value of \$1,500,000.00 for the subject property.

9. Respondent's witness, Johanna Saizan Payne, a Certified Residential Appraiser with the Pitkin County Assessor's Office, presented an indicated value of \$2,750,000.00 for the subject property based on the market approach.

10. Respondent and Petitioner used four comparable sales in common; 294 Draw Drive, 123 Cottonwood, 1033 Willoughby and 151 Heron Hollow. Respondent's witness presented five comparable sales ranging in sales price from \$1,775,000.00 to \$3,325,000.00 and in size from 2,096 to 3,860 square feet. After adjustments were made, the sales ranged from \$2,484,300.00 to \$3,118,600.00.

11. Ms. Payne testified that she reviewed Petitioner's comparable sales and explained that they would require adjustments for differences in quality, condition, site size, view, design and appeal, bedroom and bath count and amenities. Her research indicates views and topography are important to buyers in this market. Buyers look at the building envelope of a site versus the FAR. Lots with steep slopes will not always allow the maximum FAR. She believes the quality of the subject property is reasonable for the year of construction.

12. Under cross-examination, Ms. Payne testified that she has been inside the subject property on more than one occasion. She evaluated the condition of the property as of January 1, 2003. She described the subject property as having five bedrooms. To calculate the total number of bathrooms she counts the fixtures. She reiterated that the view of Respondent's Comparable Sale 2 is inferior to the subject property. She explained that the subject dwelling is situated lower, has a mountain view but does not see the full mountain range. Ms. Payne further explained that the comparable sales she used are similar to the subject property in condition and sold during the appropriate timeframe.

13. Respondent's witness, Mr. Larry Fite, a Certified General Appraiser with the Pitkin County Assessor's Office, testified that the FAR does play a part in a buyer's decision. However, it is not a buyer's sole consideration in determining whether to purchase or not. In some cases, a specific FAR is allowed but steep mountain slopes may prohibit building the maximum FAR. FAR refers only to aboveground square footage, basements are not included in the calculation.

14. Respondent's Exhibit 3 includes a summary of sales and their allowable FAR. Mr.

Fite explained that a higher FAR does not necessarily secure a higher sales price. Additionally, no clear trend is indicated that floor area ratios are a driving force in property values.

15. During cross-examination, Mr. Fite testified that the buyer of Respondent's Comparable Sale 1 owned the adjacent property. He purchased this property for use as a guesthouse. He believes that if a property owner had unlimited funds and wanted to protect his privacy, it would make sense to purchase the home next door.

16. Upon further cross-examination, Mr. Fite stated that he would describe the slope of Petitioner's Comparable Sale at 379 Draw Drive as steep. However, the steep slope did not limit that owner from building a large house on that site. He believes that topography does not play a part in property value. The improvement at 379 Draw Drive is partially supported by pilings, which created greater expense and difficulty in construction. Mr. Fite also explained that the property at 151 Herron Hollow has a guesthouse and the house is currently being expanded, which illustrates that the site will support a larger home.

17. Under redirect, Mr. Fite testified that dwellings requiring stilts or pilings due to steep slopes would be more expensive to build. A buyer would account for these higher costs in the price, probably decreasing the value. He explained the subject site has a slope but is not steep like the other sales.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2003.

2. Respondent submitted a well-documented and organized appraisal report containing comparable sales that were adjusted for differences in physical characteristics. The assigned value takes into consideration the factors affecting overall valuation including adjustments for time trending and square footage.

3. The Board could give little weight to Petitioner's sales as no adjustments were made for differences in physical characteristics. Colorado Revised Statutes require that residential property be valued using the market comparison approach. Adjustments made to the sales are to be derived from market extraction.

4. The Board reviewed Petitioner's evidence and testimony regarding deficiencies and/or negative factors of the subject property as compared to all of the sales. Petitioner's evidence and testimony did not persuade the Board that value differences exist based on floor area ratios. Petitioner did not present any evidence to prove that a market trend is indicated, that Respondent's sales were not comparable to the subject property, that the quality of the subject property is inferior when compared to other homes in the neighborhood, that the subject property is perceived by the market as a "tear down," or that the square footage of the dwelling would diminish the value.

5. The Board was convinced that the subject property is located in an area of high

- 5. The Board was convinced that the subject property is located in an area of high demand.
- 6. After careful consideration of all of the evidence and testimony presented, the Board affirms Respondent's assigned value of \$2,569,900.00 for tax year 2003.

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 8th day of September 2004.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

Rebecca Hawkins
Rebecca Hawkins

This decision was put on the record

SEP 08 2004

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

Penny S. Lowenthal
Penny S. Lowenthal

