

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>KENT AND ELIZABETH LUND,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioners:</p> <p>Name: Kent and Elizabeth Lund Address: 203 S. Pontiac Street Denver, Colorado 80230 Phone Number: (303) 343-3955</p>	<p>Docket Number: 42840</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 2, 2004, Steffen A. Brown and MaryKay Kelley presiding. Petitioners appeared pro se. Respondent was represented by Charles T. Solomon, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**203 South Pontiac Street, Denver, Colorado
Denver County Schedule No. 06084-07-002-000**

Petitioner is protesting the 2003 actual value of the subject property, a brick two-story built in 1999 in the Park Estates Subdivision of the Lowry neighborhood.

ISSUES:

Petitioners:

Petitioners contend that all of Respondent's comparable sales had superior features, materials, and upgrades not addressed in their market approach and that the house next door negatively affects the subject's value and marketability.

Respondent:

Respondent contends that the subject property has been correctly valued for tax year 2003.

FINDINGS OF FACT:

1. The subject property is located in an 83-home subdivision within the Lowry neighborhood. The site of a former Parade of Homes, it is comprised of custom homes constructed by a variety of builders.

2. Kent and Elizabeth Lund, Petitioners, presented the appeal on their own behalf.

3. Mr. Lund testified that he and his wife purchased their home from Kurowski Development Company and selected fewer upgrades and lower-quality materials than other homes in the subdivision: a Sears appliance package rather than commercial grade appliances; lower-quality cabinets, counters, doors and moldings; no basement finish or home theatre. They contracted at \$525,000.00 and closed at \$589,692.00. He had no knowledge of materials, quality, or upgrades in Respondent's comparable sales, testifying that their higher sales prices proved their superiority.

4. Both parties testified that 213 South Pontiac Street, one site south of the subject, is a considerably larger stucco two-story house with a flat roof. Lowry Development Authority filed a lien against the builder for violation of covenants, including size and a non-peak roof requirement. It was determined that construction was too advanced for resolution, and the case was dismissed. The builder paid an estimated \$11,000.00 to the Lowry Development Authority for costs and attorneys' fees. Mr. Lund testified that the house is an eyesore, blocks the sun, affects marketability, and that the Respondent failed to address it in his market approach.

5. Mr. Lund testified that the subject's 7,200 square foot site is smaller than the typical 10,000 square foot lot and acknowledged that Respondent addressed this difference in their market grid.

6. Mr. Lund testified that there was an unfair 27% increase in actual values from \$600,000.00 to \$812,500.00 for tax years 2001 and 2003.

7. Petitioner is requesting a 2003 actual value between \$600,000.00 to \$660,000.00 for the subject property.

8. Respondent's witness, Glen Haefliger, a Certified Residential Appraiser with the Denver County Assessor's Office, presented an indicated value of \$790,000.00 for the subject property based on the market approach.

9. Mr. Haefliger presented three comparable sales ranging in sales price from \$839,752.00 to \$880,000.00 and in size from 3,462 to 3,646 square feet. After adjustments were made, the sales ranged from \$787,434.00 to \$791,744.00. He selected comparable sales for their location within the subject's custom home subdivision but did not include Parade of Homes' sales due to their superior materials and features. No details about the interiors of Respondent's comparable sales were provided. Adjustments were made for time, lot size, room count and size, basement size and finish, and fireplaces.

10. Mr. Haefliger testified that he could identify only two lower-priced sales in the subdivision during the base period: 226 South Poplar Street sold for \$695,000.00 in August 2001 and 146 South Poplar Street sold for \$684,527.00 in March 2001. He did not include them in the market approach because he could not verify whether they were arms-length transactions without pre-sale prices or builder concessions.

11. In response to Petitioner's questioning a 27% increase in actual values, Mr. Haefliger discussed his application of a .08113% time adjustment to his market comparables.

12. Respondent assigned an actual value of \$766,600.00 to the subject property for tax year 2003.

CONCLUSIONS:

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

2. The Board would have benefited from information about the subject property and all comparable sales, including features, materials, finishes, and upgrades. Neither party provided exhibits or testimony despite quality differences being paramount to value. The Board lacks confidence in Respondent's indicated value for this reason yet was not provided substantive data from either party.

3. The Board reviewed the two sales described in Findings of Fact 10 but concluded that the data reported in Petitioner's Exhibit 3 was insufficient to support either Petitioner's or Respondent's case.

4. Colorado Revised Statutes require that the value of residential properties be based on the market approach. Petitioner's comparison of 2001 and 2003 actual values is not a valid method of determining current value, nor is averaging sales prices.

5. The Board was convinced by testimony and photographs that the house to the south of the subject at 213 South Pontiac Street is considerably larger, of a different style, atypical for the subdivision, blocks the sun, and is likely to affect marketability of the subject.

6. Based on the evidence and testimony presented, the Board concluded that the 2003 actual value of the subject property should be reduced to \$725,000.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$725,000.00.

The Denver County Assessor is directed to change his/her records accordingly.

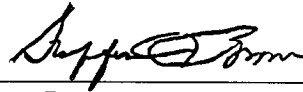
APPEAL:

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

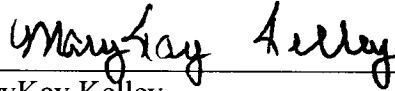
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 15th day of September 2004.

BOARD OF ASSESSMENT APPEALS



Steffen A. Brown

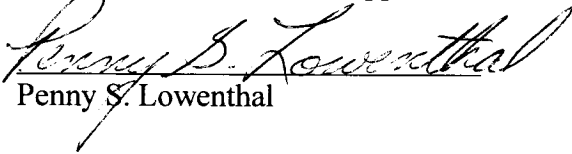


MaryKay Kelley

This decision was put on the record

SEP 14 2004

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



Penny S. Lowenthal

