

<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>MARK J. AND ALEESHA A. WINKLER,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>DOUGLAS COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 50429</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on September 17, 2009, Sondra Mercier and MaryKay Kelley presiding. Mark J. Winkler appeared pro se for Petitioners. Respondent was represented by Robert D. Clark, Esq. Petitioners are protesting the 2008 actual value of the subject property.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**5787 Amber Ridge Drive, Castle Rock, Colorado  
(Douglas County Schedule No. R0439416)**

The subject property is a 7,111-square-foot, two-story residence with finished basement built in 2005 on a 0.569-acre site. It is located in the gated Amber Ridge at Daniel’s Gate community in the Romar West subdivision.

Respondent assigned an actual value of \$1,780,000.00 for tax year 2008. Petitioners are requesting a value of \$1,326,000.00.

Petitioners presented five comparable sales ranging in sales price from \$670,000.00 to \$1,345,000.00. No information other than sales price and date of sale was provided. The sales were not presented on a comparison grid, and adjustments were not applied for differences in location, size, quality, features, or dates of sale.

Based on the application of Respondent's average price per square foot to sales in his neighborhood, Petitioners are requesting an actual value of \$1,326,000.00.

Respondent presented an indicated value of \$1,780,000.00 for the subject property based on the market approach. Six comparable sales were presented ranging in sales price from \$1,200,000.00 to \$1,545,000.00 and in size from 3,706 to 5,971 square feet. After adjustments were made, the sales ranged from \$1,502,507.00 to \$1,913,147.00.

Respondent's selection of comparable sales was based on similarity in age and excellent construction quality typical of custom-built homes. Sales of semi-custom construction by production builders were not considered, nor were non-market transactions. Two sales within the subject's Romar West neighborhood were identified with others selected from competing subdivisions. Sales 1 and 4 were given the most weight.

Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2008.

The Board was not persuaded Petitioners' comparable sales supported a reduction in value. Sale 2 was used by both parties. Sale 3 was production built with inferior materials and fewer features, making it less comparable than custom-built homes of excellent quality. Sale 4's substantial adjustments rendered it unreliable. Sale 1 sold at auction and the parties were related in Sale 5, neither of which falls within the definition of market value. According to the Appraisal Institute, market value includes "reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress." *3 Assessor's Reference Library: Land Valuation Manual 2.3* (2007). A sale between related parties is a non-arm's length sale which should not be used to establish values. *Id.* at 3.25.

Petitioners presented assessed values of comparable properties and sales which occurred after June 30, 2006. The Board did not weigh comparisons of assessed values in determining market value for the subject property. "Our state constitution and statutes make clear that individual assessments are based upon a property's actual value and that actual value may be determined using a market approach, which considers sales of similar properties." *Arapahoe County Board of Equalization v. Podoll*, 935 P.2d 14, 17 (Colo. 1997). Once the actual value of the subject property has been determined, the Board can then consider an equalization argument if evidence or testimony is presented which shows the Board that the assigned values of the comparables were derived by application of the market approach and that each comparable was correctly valued. Petitioner did not present that evidence. Neither can the Board consider Petitioners' sales beyond the base period ending June 30, 2006. *See* Section 39-1-104(10.2)(d), C.R.S.

## **ORDER:**

The petition is denied.

**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-five 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-five 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 15<sup>th</sup> day of October 2009.

**BOARD OF ASSESSMENT APPEALS**

Sondra W. Mercier  
Sondra W. Mercier

MaryKay Kelley  
MaryKay Kelley

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

Heather Flannery  
Heather Flannery

