

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>THUNDERBOWL LLLP.,</p> <p>v.</p> <p>Respondent:</p> <p>PITKIN COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 58512</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 26, 2012, Louesa Maricle and Diane M. DeVries presiding. Petitioner was represented by Gregory S. Gordon, Esq. Respondent was represented by Michele B. Whisler, Esq. Petitioner is protesting the 2011 actual value of the subject property.

Subject property is described as follows:

**460 Thunderbowl Lane, Aspen, CO
Pitkin County Schedule No. 2735-143-10-003**

The subject property is a single family residence located two miles west of downtown Aspen. The lot is .955 acres and borders the Aspen Highlands ski resort. The property has direct ski in and ski out access to the subject residence. The views include a ski slope hill near the residence, the Maroon Creek Valley, Tiehack ridge, and Red Mountain.

The home was built in 2002 and has 8,379 heated square feet with a large 838 square foot garage. The three-story residence has six bedrooms, six bathrooms, one powder room, radiant floor heating as well as forced air, central air conditioning, cut stone exterior and cedar shake roof. Kitchen has custom granite counters, high-end appliances and custom cabinets with a large prep island. Extras in the home include an elevator, five custom fireplaces, steam shower, media room, ski locker room, security system, two wet bars, caretaker quarters, hot tub and an outside fire pit.

Petitioner is requesting an actual value of \$7,500,000 for the subject property for tax year 2011. Respondent assigned a value of \$9,353,200 but is recommending a reduction to \$9,350,000 for the subject property for tax year 2011.

Petitioner's witness, Raifie Bass, Aspen Snowmass Sotheby's International Realty, has been an expert in the Aspen real estate market for 17 years. Mr. Bass testified that five of the comparable sales used by the Assessor's Office are in Maroon Creek Subdivision which enjoys the Buttermilk Ski area. Maroon Creek is more family oriented with family skiing, hiking, biking and golf which lends to more year-round activities for families. Mr. Bass believes that Maroon Creek subdivision is superior to that of the subject property subdivision, Aspen Highlands.

Mr. Bass testified that Highlands Village has higher density and is larger and more spread out. He believes that Aspen Highlands Village is a "debacle" with "rent free" incentives to attract commercial businesses. The retail space, the commercial core of Aspen Highlands Village, has been affected adversely by economic conditions in the past seven years.

Mr. Bass testified that 3,366 square feet of the subject property is below grade basement and should not be valued at \$1,116 per square foot; but rather should be adjusted and valued at \$490.54 per square foot. The subject property is not a walkout basement therefore has no views from the basement. Mr. Bass did not provide the Board the rationale on how he arrived at the \$490.54 per square foot.

Petitioner presented eight comparable sales (seven of those sales are the same as the Assessor and later Respondent used in valuing the subject) ranging in time adjusted sale price from \$6,008,640 to \$12,062,800 and in size from 3,089 to 9,922 square feet. After adjustments were made, the sales ranged from \$9,244,590 to \$14,531,160.

Petitioner's Exhibit reflects comparable sales used by the Assessor's Office throughout the appeal process. Petitioner's witness did not provide the Board with comparable sales other than the sales provided by Respondent.

Petitioner's witness, John F. Hire, Red Diamond, Ltd., General Counsel and General Partner for the Thunderbowl, LLLP, testified that the subject development did not materialize to be the active vibrant "Village" that would benefit the residences of Aspen Highlands Subdivision; it has been a disappointment.

Mr. Hire stated that the subgrade space of the subject property is dark and trees shade the property by mid-day diminishing the views of the subject.

Petitioner is requesting a 2011 actual value of \$7,500,000 for the subject property.

Respondent presented a value of \$9,350,000 for the subject property based on the market approach.

Respondent's witness, Wendy S. Schultz, Certified Residential Appraiser for the Pitkin County Assessor's Office, presented seven comparable sales ranging in time adjusted sales price from \$6,008,640 to \$12,062,800 and in size from 4,810 to 9,922 square feet. After adjustments were made, the sales ranged from \$8,134,590 to \$13,366,160.

Ms. Schultz testified that the criteria she looked at for valuing the subject property for tax year 2011 were: location, views, and ski in/ski out access. The location map in Petitioner's Exhibit 4, page 11, shows the location of the subject comparable sales and the amenities of each sale.

Respondent assigned an actual value of \$9,353,200 but is recommending a reduction to \$9,350,000 to the subject property for tax year 2011.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2011.

The Board reviewed all of the evidence and testimony presented by all parties. The Board believes that there are major differences in subdivisions and access to the four ski mountains. The subject property does enjoy ski in ski out privileges to Aspen Highlands ski area. With the exception of one comparable sale, Petitioner used the same comparable sales as Respondent. None of the comparable sales used enjoy the ski in ski out privileges to the ski mountain. The subject property is the only property that enjoys Aspen Highlands.

Maroon Creek Subdivision, although it has many amenities for families to enjoy, is not Aspen Highlands. The Board does not believe that Maroon Creek is a superior subdivision to that of the subject. Maroon Creek does not have the density or the "Village Core" that the subject property enjoys.

The Board does not agree with Petitioner that the subject's basement should be valued at \$490.54 per square foot.

Colorado case law requires that the "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence . . ." *Bd. Of Assessment Appeals v. Sampson*, 105 P.3d 198 , 204 (Colo. 2005). After careful consideration of the evidence and testimony presented at the hearing, the Board concludes that Respondent's sales comparison approach and adjustments accurately reflect the market value of the subject property as of June 30, 2010.

ORDER:

The petition is granted.

The Pitkin County Assessor is ordered to reduce the 2011 value of the subject property to Respondent's recommended value of \$9,350,000.

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 25th day of July, 2012.



BOARD OF ASSESSMENT APPEALS

Louesa Maricle

Diane M. DeVries

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

Milla Crichton