

<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>DANIEL H. &amp; MAUREEN A. SMILKSTEIN,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ROUTT COUNTY BOARD OF COMMISSIONERS.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Daniel H. Smilkstein Address: P.O. Box 880107 Steamboat Springs, Colorado 80488 Phone Number: (970) 879-5916</p>	<p><b>Docket Number: 41026</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 21, 2003 Steffen A. Brown, MaryKay Kelley and Debra A. Baumbach presiding. Petitioner appeared pro se. Respondent was represented by John D. Merrill, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**NW4SE4NE4 SEC 18-6-84 Total 10 acres  
(Routt County Schedule No. R0208574)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2001. The subject property is a 10- acre parcel of vacant land. The subject is located adjacent to the City of Steamboat Springs and is surrounded by approximately 1,700 acres of dedicated conservation and open space land.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the subject has been overvalued. The comparable sales used by the Respondent are all superior to the subject, reflecting a higher value. The Respondent did not make any adjustments for the unresolved easement issue. The utility company has refused to provide electrical service to the subject until proper access is established.

### **Respondent:**

Respondent contends that the subject has been properly valued. The comparable sales used are very similar to the subject and adjustments were made for any differences in physical characteristics. All of the factors affecting the subject property were taken into consideration. The assigned value is well supported by the comparable sales.

## **FINDINGS OF FACT:**

1. Mr. Daniel H. Smilkstein, Petitioner, presented the appeal on his own behalf.
2. Based on the market approach, Petitioner presented an indicated value of \$160,000.00 for the subject property.
3. The Petitioner did not present any comparable sales for consideration. However, he did present assessment information on several properties. These properties have slightly larger acreages and were valued much lower than the subject. Petitioner did not present any adjustments or sales information.
4. Mr. Smilkstein testified that two of the comparable sales used by the Respondent are located in a more exclusive area, which reflect higher value ranges. Two of these sales have city utilities and services. The other sale has seasonal access and is not suitable for building.
5. Mr. Smilkstein testified that the Respondent did not consider the unresolved easement issue and the inability to obtain utilities on site. These issues provoke speculation as to whether the highest and best use of the subject site is residential.
6. Petitioner testified that the Respondent should have considered sales in the Fairview subdivision. The homes in this area are within closer proximity to the subject and are more similar to the subject property.
7. Under cross-examination, Mr. Smilkstein testified that the subject property, with an access easement, was purchased in 1988. However, Mr. Weiss, the attorney responsible for preparing the documents to vacate Blackmer Drive from Routt County to the City of Steamboat Springs, did not prepare the documents in time and the surveyor did not sign off on the survey. The

Yampa Valley Electric Association will not provide any estimates or utilities until the easement issue is resolved.

8. Petitioner is requesting a 2001 actual value of \$160,000.00 for the subject property.

9. Respondent's witness, Amy Williams, Assessor for Routt County, presented an indicated value of \$308,700.00 for the subject property, based on the market approach.

10. Respondent's witness presented three comparable sales ranging in sales price from \$48,000.00 to \$630,000.00, and in size from 5 to 34 acres. The time adjusted sales prices indicated a range of value from \$10,240.00 to \$71,100.00 per acre. After qualitative adjustments were made to the comparable sales, the values ranged from \$30,000.00 to \$40,000.00 per acre. The indicated value for the subject property is \$30,000.00 per acre.

11. Ms. Williams testified that the subject property is a unique 10-acre parcel. It is within walking distance to the City of Steamboat Springs. It is also surrounded by a conservation easement and open space. The subject is within close proximity to the ski resort.

12. Ms. Williams testified that the subject has deeded access and a 25-foot prescriptive easement to the property. There has been access for over 20 years. The easement runs from the Smilkstein's property to Blackmer Drive. However, the subject does not have an uninterrupted deeded access easement. Yampa Valley Electric confirmed that they would resist the installation of utilities until the vacation process and original easement survey error were completed.

13. Ms. Williams testified that the highest and best use of the subject property is a single-family home site. The comparable sales selected were considered to be the most similar to the subject, and adjustments were made for differences in physical characteristics. Comparable sale 1 is within close proximity to Steamboat Springs and sold with an access easement. Comparable sale 2 did not have a legal access easement. It took two years and approximately \$15,000.00 to negotiate the easement through the Forest Service. Comparable sale 3 was selected primarily to bracket the subject. This sale has only seasonal access, no utilities, and was not considered to be a suitable residential home site. This site was considered to be more of a part-time recreation site.

14. Under cross-examination, Ms. Williams testified that she examined comparables sales within a 10-mile radius of Steamboat Springs. The Fairview subdivision is comprised of older homes located on smaller residential lots. Strawberry Park is a rural community located outside of the city boundaries and is in transition. This area is comprised of higher-end homes. Respondent's comparable sales were considered to be the most suitable and comparable to the subject. The subject is located in a highly desirable area and is in close proximity to the ski resort and the city. The subject has a conservation easement, an access easement, and is surrounded by open space.

15. Respondent assigned an actual value of \$308,700.00 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.

2. The Respondent presented a well- documented and supported appraisal report. The comparable sales bracket the subject and were adjusted for differences in characteristics. Comparable sale 2 sold with no utilities and had an access issue. Comparable sale 3 has only seasonal access and no utilities. Both of these sales reflect market trends in the area and represent what a typical buyer would pay for this type of property.

3. The Board realizes that it is difficult to establish market value when there are limited sales for comparison. However, the Petitioner did not present any comparable sales with similar access issues to refute the sales presented by the Respondent. The Petitioner presented assessment information. Typically, the Board considers assessment information as additional support for comparable sales that have been presented and properly adjusted. There was not enough information provided on either of these properties to determine if they were suitable sales.

4. Testimony indicates that Yampa Valley Electric is resisting the installation of utilities until the easement issue is resolved. The Board believes that Respondent did take this matter into consideration. There was no testimony to indicate that once these issues are resolved, that utilities would not be provided. The Board believes that the inability to resolve the easement issue, which is preventing the installation of utilities, is a result of delinquency in the process of filing the proper paperwork and not the easement itself.

5. After careful consideration of all the evidence and testimony presented, the Board affirms Respondent's 2001 actual value of \$308,700.00.

### **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.

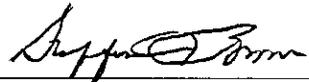
In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

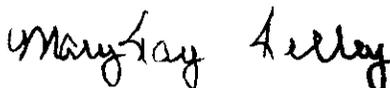
If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

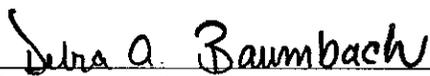
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

**DATED and MAILED** this 10<sup>th</sup> day of December, 2003.

**BOARD OF ASSESSMENT APPEALS**

  
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Steffen A. Brown

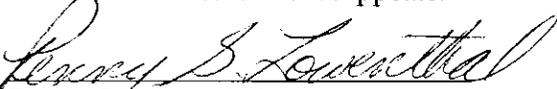
  
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MaryKay Kelley

  
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Debra A. Baumbach

This decision was put on the record

**DEC 18 2003**

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

  
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Penny S. Lowenthal

