

|  |                                    |
|--|------------------------------------|
| <p><b>BOARD OF ASSESSMENT APPEALS,<br/>STATE OF COLORADO</b><br/>1313 Sherman Street, Room 315<br/>Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>BARRY J. SHAINMAN,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>EAGLE COUNTY BOARD OF EQUALIZATION.</b></p> |                                    |
| <p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Barry J. Shainman<br/>Address: 587 Kensington Drive<br/>Edwards, Colorado 81632<br/>Phone Number: (203) 573-2822</p>  | <p><b>Docket Number: 41280</b></p> |
| <p style="text-align: center;"><b>ORDER</b></p>  |                                    |

**THIS MATTER** was heard by the Board of Assessment Appeals on March 24, 2003, Rebecca Hawkins and Karen E. Hart presiding. Petitioner appeared pro se. Respondent was represented by Bryan R. Treu, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**587 Kensington Drive, Edwards, Colorado  
(Eagle County Schedule No. R041663)**

Petitioner is protesting the 2003 actual value of the subject property, a two-story single-family residence on .25 acres in a gated golf community. The home has 2,969 square feet with 3 bedrooms and 4.5 baths.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the subject property is overvalued and that the Assessor's method of determining value is flawed.

### **Respondent:**

Respondent contends that the subject property is correctly valued based on comparable market sales.

## **FINDINGS OF FACT:**

1. Mr. Barry J. Shainman, Petitioner, presented the appeal on his own behalf.
2. Petitioner presented an indicated value of \$750,000.00 for the subject property.
3. Mr. Shainman testified that the exterior finish of the subject property is stucco. It is located in the sub-area of Kensington Green within the larger development of Cordillera. He believes the Assessor's method of valuing the subject property is flawed as no negative time adjustment was applied. The sales used by Respondent's witness occurred either at the beginning or at the end of the base period. Values were accelerating at the beginning of the base period and rapidly declining at the end of the base period. The changing values were not addressed in Respondent's appraisal.
4. Mr. Shainman presented data on numerous properties broken down by assessed value per time adjusted sale price (TASP), as well as the ratio of assessed value to TASP. Petitioner obtained this information from the Eagle County Assessor's office. Mr. Shainman compared the subject property to other homes in the neighborhood using the above-described formulas.
5. Petitioner is requesting a 2003 actual value of \$756,000.00 for the subject property.
6. Respondent's witness, Ms. Andrea Ann Wilkerson, a Licensed Appraiser with the Eagle County Assessor's Office, presented an indicated value of \$875,750.00 for the subject property based on the market approach.
7. Respondent's witness presented four comparable sales ranging in sales price from \$790,000.00 to \$992,000.00 and in size from 1,961 to 3,112 square feet. After adjustments were made, the sales ranged from \$838,730.00 to \$962,436.00.
8. Ms. Wilkerson inspected the interior and exterior of the subject property. As shown in Respondent's Exhibit 1, the four comparable sales used are in the same neighborhood as the subject, a gated planned community of high-end residential homes. Most of the properties are used as second homes and owners have the option to become members of the Cordillera Golf Club.

Cordillera contains 989 homes on 7,000 acres and has four golf courses within the community. The general development of Cordillera consists of four separate sub-neighborhoods with their own unique characteristics. The subject and all four comparable sales are located in the sub-neighborhood of "The Divide." A single developer built the homes in the development, resulting in homes similar in age and design.

9. Ms. Wilkerson testified that there was an oversupply of homes in this market area during the base period. This resulted in a stable market with little increase in values. Therefore, no time adjustments were applied to the comparable sales. All of the comparable sales are similar to the subject in site size and year of construction. Comparable Sales 1, 2 and 4 are two-story models; Sale 3 is a one-level ranch. Sales 1, 3 and 4 are larger in square-footage; Sale 3 is substantially smaller resulting in a large positive adjustment. Sale 3 is the least similar to the subject property and was given less weight. The subject has a view of the pond and golf course. Ms. Wilkerson explained that the market did not recognize a value difference for a specific view in this neighborhood. All sales were influenced by the golf course and its amenities; therefore, no view adjustments were necessary. Ms. Wilkerson gave the most weight to Comparable Sale 2 as it is most similar to the subject and required the least net adjustment.

10. Respondent presented an appraised value of \$884,000.00 and an assigned actual value of \$875,750.00 for tax year 2003.

## **CONCLUSIONS:**

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2003. Respondent's witness presented four comparables from the subject neighborhood that sold during the base period. The comparables were adjusted for differences in physical characteristics. Based on market data, no time adjustment was necessary.

2. The Board considered the testimony of Mr. Shainman regarding declining values during the base period. The Board gave little weight to this testimony, as Mr. Shainman did not reference any independently published documentation to substantiate a decline in market values and the Board does not consider this to have been established by common notoriety.

3. Pursuant to §39-1-103 (5) (a) C.R.S., "The actual value of residential real property shall be determined solely by consideration of the market approach to appraisal." Petitioner presented seven sales from the subject neighborhood, but made no adjustments for differences in physical characteristics. The Board could give no weight to the ratios of time adjusted sales prices and the resulting prices per square foot.

4. The Board could not consider the purchase price paid by Petitioner on October 28, 2003 as it occurred outside the base period. The statutory data collection period is from January 1, 2001 through June 30, 2002. Pursuant to §39-1-104 (10.2) (d) C.R.S., "Beginning with the property tax year commencing January 1, 1999, if comparable valuation data is not available from such one-and-one-half year period to adequately determine such actual value for a class of property, "level of

value” means the actual value of taxable real property as ascertained by said applicable factors for such one-and-one-half year period, the six-month period immediately preceding such one-and-one-half-year period, and as many preceding six-month periods within the five-year period immediately prior to July 1 immediately preceding the assessment date as are necessary to obtain adequate comparable valuation data.”

5. The Board supports the use of an independent appraiser to obtain a property value during the base period. However, the appraiser must be available for testimony and cross-examination. The appraisal report must utilize the sales comparison approach to value.

6. The Board agrees with Ms. Wilkerson that the sales shown in Exhibit 2 of Petitioner’s Exhibit A are larger than the subject property and are not comparable. When dealing with comparables from 1,099 to 1,566 square feet larger than the subject, an analysis of time adjusted sales prices divided by effective square footages is not an appropriate appraisal practice.

7. Based on all of the evidence and testimony presented, the Board affirms Respondent’s assigned value of \$875,750.00 for tax year 2003.

**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 3<sup>rd</sup> day of May, 2004.

BOARD OF ASSESSMENT APPEALS

*Karen E Hart*

Karen E. Hart

*Rebecca Hawkins*

Rebecca A. Hawkins

This decision was put on the record

MAY 05 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

