

| | |
|--|------------------------------------|
| <p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ANTHONY J. MAZZA,</p> <p>v.</p> <p>Respondent:</p> <p>PITKIN COUNTY BOARD OF EQUALIZATION.</p> | |
| <p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Anthony J. Mazza M & W Properties</p> <p>Address: 205 South Mill Street Aspen, Colorado 81611</p> <p>Phone Number: (970) 925-8032</p> | <p>Docket Number: 41552</p> |
| <p>ORDER</p> | |

THIS MATTER was heard by the Board of Assessment Appeals on March 31, 2004, Judge Nuechter and Diane M. DeVries presiding. Petitioner appeared pro se. Respondent was represented by Christopher G. Seldin, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**308 West Reds Road, Aspen, Colorado
(Pitkin County Schedule No. R003613)**

Petitioner is protesting the 2003 actual value of the subject property, a 7,723 square foot single-family residence located in the Red Mountain Subdivision built in 1999 on a 1.40-acre parcel.

ISSUES:

Petitioner:

Petitioner contends that the subject property is not valued correctly. An appraisal prepared by David Ritter during the base period for mortgage purposes concluded to a final value for the subject property of \$9,400,000.00.

Respondent:

Respondent contends that the actual value of the subject property for tax year 2003 is \$10,250,000.00 based on the market approach. This is a recommended reduction in value from the assigned value of \$10,410,700.00.

FINDINGS OF FACT:

1. Mr. Anthony Mazza, Petitioner, presented the appeal on his own behalf.
2. Mr. Mazza testified that the appraisal prepared by Mr. Ritter, Petitioner's Exhibit 1, reflects a 2003 opinion of market value of \$9,400,000.00.
3. David N. Ritter, Certified General Appraiser, was accepted by the Board as an expert in the field of real estate appraisal. He was retained by U. S. Bank to appraise the subject property for mortgage purposes in 2001. The subject property consists of a single-family residence located on 1.40 acres of land, and is considered to be in very good condition. The subject property consists of 7,723 square feet with 11 rooms above grade, four bedrooms, four full bathrooms, and three partial bathrooms. It has hot water radiant heat, a three-car garage, patio, deck, fireplace, wine room, media room, steam shower, spa, wet bar, and outdoor lap pool.
4. Mr. Ritter testified that he used the cost and market approaches to value the subject property. The income approach was not applicable. He relied on the market approach in determining the value of the subject property. The bank required that he look at three comparable listings as well to determine if the value was in line with actual sales.
5. Mr. Ritter testified that all three of the comparable sales used were located on Red Mountain. Comparable 1 sold July 17, 2001 for \$9,800,000.00. This property is located on 1.53 acres and \$250,000.00 of personal property was included in the purchase price. This property has 12 rooms above grade, five bedrooms, five full bathrooms and two partial bathrooms, for a total square footage of 7,363.
6. Mr. Ritter testified that Comparable 2 sold May 14, 2001 for \$8,650,000.00. This property is located on 2.57 acres, and has an effective age of 10 years. It has 12 rooms above grade, six bedrooms, six full bathrooms and three partial bathrooms for a total square footage of 10,460.

7. Mr. Ritter testified that Comparable 3 was the weakest comparable sale. It sold May 24, 2001 for \$6,000,000.00. The house is located on one acre, has 12 rooms above grade, five bedrooms, six full bathrooms and one partial bathroom for a total square footage of 5,789. This comparable sale also has a caretaker guest apartment.

8. Mr. Ritter testified that his three comparable sales ranged in sales price from \$6,000,000.00 to \$9,800,000.00 and in size from 5,789 to 10,460 square feet. After adjustments were made, the sales ranged from \$9,324,000.00 to \$9,458,000.00.

9. Mr. Ritter testified that Comparable 4 sold in February 2002 for \$12,600,000.00. The property was listed for \$12,750,000.00. Even though Comparable 4 could not be used, it is a good indicator of value.

10. Under cross-examination, Mr. Ritter testified that Comparable 1 is the best comparable sale as it is most similar to the subject property. Comparable 1 was sold furnished and contained \$250,000.00 of personal property. He verified this information with the selling brokerage firm in November 2001. Mr. Ritter did not reconfirm the sale. Although page 6 of Respondent's Exhibit C-1, a printout from the Multiple Listing Service, indicates that Comparable 1 was not listed as being furnished, Mr. Ritter testified that it would not change his opinion of value. Comparable Sale 2 required major adjustments due to age and size. Comparable 3 was the weakest comparable.

11. Mr. Ritter testified that, as shown on page 3 of the Addendum to Petitioner's Exhibit 1, the subject property is 1.40 +/- acres, according to Pitkin County public records. The site is larger than the typical building site on Red Mountain. Access to the subject property is via West Reds Road and is considered very good.

12. Mr. Ritter testified that superior views warrant a positive adjustment. He made a positive adjustment to Comparable 3 for superior view and seclusion of the subject property. He did not make a view adjustment to Comparables 1 and 2, as he believes they have views similar to the subject property.

13. Referring to the photograph that appears at the bottom of page 5 of Respondent's Exhibit B-1, Mr. Ritter testified that Comparable 3 does not have a panoramic view, but that it does have a view of Aspen and Buttermilk Mountains. As shown on page 2 Respondent's Exhibit B-1, the subject property has an unobstructed view. Page 3 of Respondent's Exhibit B-1 shows that Comparable 1 has some obstruction of view. As indicated in Respondents Exhibit A-1, Comparable 1 at 186 Wrights Road is located one tier down from the subject property on Red Mountain, at a busier intersection than that of the subject property.

14. Mr. Mazza indicated that he was leaving the hearing since he did not realize that an hour was allotted to each side. He waived his right to cross-examine the Respondent's witness. He requested that the Board grant Petitioner's costs for his time, mileage, and witness. He felt that the Respondent was unwilling to give any weight to the appraisal performed by Mr. Ritter. Mr. Mazza left the hearing at 2:00 p.m.

15. Mr. Larry Fite, a Certified General Appraiser with the Pitkin County Assessor's Office, was accepted by the Board as an expert in the field of real estate appraisal. Mr. Fite presented Respondent's Exhibit B, an appraisal of the subject property prepared in January 2004. He presented three comparable sales ranging in sales price from \$8,000,000.00 to \$9,760,000.00 and in size from 5,838 to 8,504 square feet. After adjustments were made, the sales ranged from \$9,704,500.00 to \$10,485,000.00. He concluded that the value of the subject property should be \$10,250,000.00 as of June 30, 2002 based on the market approach.

16. Mr. Fite testified that Comparable Sale 1 is most similar to the subject property. This comparable sale is the same as Petitioner's Comparable 1. He adjusted for view, heated living area, lap pool, and wine room. Mr. Fite testified that this property sold unfurnished. He relied on the Multiple Listing Service printout and did not verify this with the broker. He testified that the subject property is located on a secluded dead-end road and has an unimpeded view of Independence Pass to the western end of the valley. There are only a few other homes on the ridge. He testified that Comparable Sale 1 should have a \$500,000.00 adjustment for view and traffic due to the traffic that is associated with this location. It is not as secluded as the subject, and its view is blocked by large rock outcroppings.

17. Respondent assigned an actual value of \$10,410,700.00 to the subject property for tax year 2003. The Respondent recommended a reduction in actual value to \$10,250,000.00 based on the market approach.

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 believes that, since both parties relied on the same comparable sale, there are two factors at issue: whether Comparable Sale 1 should be adjusted for view and whether this sale included personal property.

3. The pictures depicting the views of the subject property and Comparable Sale 1 indicate that the subject property is superior in view and seclusion to Comparable Sale 1. The Board believes that the Respondent properly made a \$500,000.00 adjustment.

4. As to the Petitioner's adjustment of \$250,000.00 for personal property that was included in the sales price, the Petitioner's witness testified that in November 2001 he verified with the selling brokerage firm that the home was sold furnished with \$250,000.00 of personal property. The Respondent's witness relied on the information contained in the Multiple Listing Service printout and did not verify the terms of the sale with the selling brokerage firm. The Respondent's exhibit shows that Comparable Sale 1 sold for \$9,760,000.00, rather than \$9,800,000.00 as reflected in the Petitioner's appraisal report and the Multiple Listing Service printout. The Multiple Listing Service has been known to have some inaccuracies. The only way to determine accuracy regarding personal property is to verify the terms of sale with the selling brokerage firm. The Petitioner's witness verified with the selling brokerage firm that personal property was involved in the sale of

Comparable 1. The Board has determined that the \$250,000.00 adjustment to Comparable 1 for personal property is warranted.

3. The Board denies Petitioner's request for reimbursement of costs incurred in connection with this appeal. This administrative process of protesting property valuations is statutorily mandated. Petitioner has the right and the obligation to appeal if he believes that the valuation of the subject property is incorrect.

4. Based on all of the evidence and testimony presented, the Board concludes that the 2003 actual value of the subject property should be reduced to \$9,900,000.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$9,900,000.00.

The Pitkin County Assessor is directed to change his 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.

ISSUES:

Petitioner:

Petitioner contends that the subject property is not valued correctly. An appraisal prepared by David Ritter during the base period for mortgage purposes concluded to a final value for the subject property of \$9,400,000.00.

Respondent:

Respondent contends that the actual value of the subject property for tax year 2003 is \$10,250,000.00 based on the market approach. This is a recommended reduction in value from the assigned value of \$10,410,700.00.

FINDINGS OF FACT:

1. Mr. Anthony Mazza, Petitioner, presented the appeal on his own behalf.
2. Mr. Mazza testified that the appraisal prepared by Mr. Ritter, Petitioner's Exhibit 1, reflects a 2003 opinion of market value of \$9,400,000.00.
3. David N. Ritter, Certified General Appraiser, was accepted by the Board as an expert in the field of real estate appraisal. He was retained by U. S. Bank to appraise the subject property for mortgage purposes in 2001. The subject property consists of a single-family residence located on 1.40 acres of land, and is considered to be in very good condition. The subject property consists of 7,723 square feet with 11 rooms above grade, four bedrooms, four full bathrooms, and three partial bathrooms. It has hot water radiant heat, a three-car garage, patio, deck, fireplace, wine room, media room, steam shower, spa, wet bar, and outdoor lap pool.
4. Mr. Ritter testified that he used the cost and market approaches to value the subject property. The income approach was not applicable. He relied on the market approach in determining the value of the subject property. The bank required that he look at three comparable listings as well to determine if the value was in line with actual sales.
5. Mr. Ritter testified that all three of the comparable sales used were located on Red Mountain. Comparable 1 sold July 17, 2001 for \$9,800,000.00. This property is located on 1.53 acres and \$250,000.00 of personal property was included in the purchase price. This property has 12 rooms above grade, five bedrooms, five full bathrooms and two partial bathrooms, for a total square footage of 7,363.
6. Mr. Ritter testified that Comparable 2 sold May 14, 2001 for \$8,650,000.00. This property is located on 2.57 acres, and has an effective age of 10 years. It has 12 rooms above grade, six bedrooms, six full bathrooms and three partial bathrooms for a total square footage of 10,460.

7. Mr. Ritter testified that Comparable 3 was the weakest comparable sale. It sold May 24, 2001 for \$6,000,000.00. The house is located on one acre, has 12 rooms above grade, five bedrooms, six full bathrooms and one partial bathroom for a total square footage of 5,789. This comparable sale also has a caretaker guest apartment.

8. Mr. Ritter testified that his three comparable sales ranged in sales price from \$6,000,000.00 to \$9,800,000.00 and in size from 5,789 to 10,460 square feet. After adjustments were made, the sales ranged from \$9,324,000.00 to \$9,458,000.00.

9. Mr. Ritter testified that Comparable 4 sold in February 2002 for \$12,600,000.00. The property was listed for \$12,750,000.00. Even though Comparable 4 could not be used, it is a good indicator of value.

10. Under cross-examination, Mr. Ritter testified that Comparable 1 is the best comparable sale as it is most similar to the subject property. Comparable 1 was sold furnished and contained \$250,000.00 of personal property. He verified this information with the selling brokerage firm in November 2001. Mr. Ritter did not reconfirm the sale. Although page 6 of Respondent's Exhibit C-1, a printout from the Multiple Listing Service, indicates that Comparable 1 was not listed as being furnished, Mr. Ritter testified that it would not change his opinion of value. Comparable Sale 2 required major adjustments due to age and size. Comparable 3 was the weakest comparable.

11. Mr. Ritter testified that, as shown on page 3 of the Addendum to Petitioner's Exhibit 1, the subject property is 1.40 +/- acres, according to Pitkin County public records. The site is larger than the typical building site on Red Mountain. Access to the subject property is via West Reds Road and is considered very good.

12. Mr. Ritter testified that superior views warrant a positive adjustment. He made a positive adjustment to Comparable 3 for superior view and seclusion of the subject property. He did not make a view adjustment to Comparables 1 and 2, as he believes they have views similar to the subject property.

13. Referring to the photograph that appears at the bottom of page 5 of Respondent's Exhibit B-1, Mr. Ritter testified that Comparable 3 does not have a panoramic view, but that it does have a view of Aspen and Buttermilk Mountains. As shown on page 2 Respondent's Exhibit B-1, the subject property has an unobstructed view. Page 3 of Respondent's Exhibit B-1 shows that Comparable 1 has some obstruction of view. As indicated in Respondents Exhibit A-1, Comparable 1 at 186 Wrights Road is located one tier down from the subject property on Red Mountain, at a busier intersection than that of the subject property.

14. Mr. Mazza indicated that he was leaving the hearing since he did not realize that an hour was allotted to each side. He waived his right to cross-examine the Respondent's witness. He requested that the Board grant Petitioner's costs for his time, mileage, and witness. He felt that the Respondent was unwilling to give any weight to the appraisal performed by Mr. Ritter. Mr. Mazza left the hearing at 2:00 p.m.

15. Mr. Larry Fite, a Certified General Appraiser with the Pitkin County Assessor's Office, was accepted by the Board as an expert in the field of real estate appraisal. Mr. Fite presented Respondent's Exhibit B, an appraisal of the subject property prepared in January 2004. He presented three comparable sales ranging in sales price from \$8,000,000.00 to \$9,760,000.00 and in size from 5,838 to 8,504 square feet. After adjustments were made, the sales ranged from \$9,704,500.00 to \$10,485,000.00. He concluded that the value of the subject property should be \$10,250,000.00 as of June 30, 2002 based on the market approach.

16. Mr. Fite testified that Comparable Sale 1 is most similar to the subject property. This comparable sale is the same as Petitioner's Comparable 1. He adjusted for view, heated living area, lap pool, and wine room. Mr. Fite testified that this property sold unfurnished. He relied on the Multiple Listing Service printout and did not verify this with the broker. He testified that the subject property is located on a secluded dead-end road and has an unimpeded view of Independence Pass to the western end of the valley. There are only a few other homes on the ridge. He testified that Comparable Sale 1 should have a \$500,000.00 adjustment for view and traffic due to the traffic that is associated with this location. It is not as secluded as the subject, and its view is blocked by large rock outcroppings.

17. Respondent assigned an actual value of \$10,410,700.00 to the subject property for tax year 2003. The Respondent recommended a reduction in actual value to \$10,250,000.00 based on the market approach.

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 believes that, since both parties relied on the same comparable sale, there are two factors at issue: whether Comparable Sale 1 should be adjusted for view and whether this sale included personal property.

3. The pictures depicting the views of the subject property and Comparable Sale 1 indicate that the subject property is superior in view and seclusion to Comparable Sale 1. The Board believes that the Respondent properly made a \$500,000.00 adjustment.

4. As to the Petitioner's adjustment of \$250,000.00 for personal property that was included in the sales price, the Petitioner's witness testified that in November 2001 he verified with the selling brokerage firm that the home was sold furnished with \$250,000.00 of personal property. The Respondent's witness relied on the information contained in the Multiple Listing Service printout and did not verify the terms of the sale with the selling brokerage firm. The Respondent's exhibit shows that Comparable Sale 1 sold for \$9,760,000.00, rather than \$9,800,000.00 as reflected in the Petitioner's appraisal report and the Multiple Listing Service printout. The Multiple Listing Service has been known to have some inaccuracies. The only way to determine accuracy regarding personal property is to verify the terms of sale with the selling brokerage firm. The Petitioner's

witness verified with the selling brokerage firm that personal property was involved in the sale of Comparable 1. The Board has determined that the \$250,000.00 adjustment to Comparable 1 for personal property is warranted.

3. The Board denies Petitioner's request for reimbursement of costs incurred in connection with this appeal. This administrative process of protesting property valuations is statutorily mandated. Petitioner has the right and the obligation to appeal if he believes that the valuation of the subject property is incorrect.

4. Based on all of the evidence and testimony presented, the Board concludes that the 2003 actual value of the subject property should be reduced to \$9,900,000.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$9,900,000.00.

The Pitkin County Assessor is directed to change his 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 9th day of April, 2004.

BOARD OF ASSESSMENT APPEALS

Judee Nuechter
Judee Nuechter

Diane M. DeVries
Diane M. DeVries

This decision was put on the record

APR 08 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

