

<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>BARTON M. BUETOW,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>JEFFERSON COUNTY BOARD OF EQUALIZATION.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Barton M. Buetow Address: 5585 S. Berry Lane Greenwood Village, Colorado 80111 Phone Number: (303) 779-8069</p>	<p><b>Docket Number: 43000</b></p>
<p style="text-align: center;"><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on August 10, 2004, Rebecca Hawkins and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by Lily Oeffler, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**4150 Kipling Street, Wheat Ridge, Colorado  
Jefferson County Schedule 043018**

Petitioner is protesting the 2003 actual value of the subject property, a 5.65-acre site located in a flood zone with two residential improvements and a barn.

## **ISSUES:**

### **Petitioner:**

Petitioner contends that the impact of flood status was not considered in the valuation of the subject property and that flood-related regulations prohibit repairs and improvements, which affects marketability and value.

### **Respondent:**

Respondent contends that the subject property was valued correctly for tax year 2003 based on the market approach.

## **FINDINGS OF FACT:**

1. The subject site is located east of Kipling Street in an established residential area. Clear Creek intersects the north end of the property, and it carries an A-10 FEMA flood designation. The subject has a 1,150 square foot ranch style dwelling built in 1946, an 803 square foot ranch style dwelling built in 1930, and a 1,008 square foot barn.

2. Petitioner's Exhibit A, an independent appraisal, was admitted into evidence for informational purposes only. The appraiser was not available for questioning.

3. Mr. Buetow, Petitioner, presented eight comparable sales ranging in sales price from \$79,000.00 to \$310,000.00 and in size from 375 to 2,357 square feet. After adjustments were made, the sales ranged from \$178,569.00 to \$268,109.00. Five sales had a second living unit, and none had barns. None of Petitioner's comparables are located in flood zones. Petitioner made no adjustments for flood zone, time, basements, or room count.

4. Based on the market approach, Petitioner presented an indicated value of \$218,765.00 for the subject property.

5. Mr. Buetow testified that Paragraph D(1), Section 26-806 of Article VIII (Floodplain Control, City of Wheat Ridge), states that "New construction or substantial improvement of any residential, commercial, industrial or other nonresidential structure may be permitted only upon a certification by a registered professional engineer to the floodplain administrator that the lowest floor, including basement, is elevated to one (1) foot or more above the base flood elevation." Mr. Buetow reported that certification by a registered professional engineer is an expensive front-end fee. Although regulations do not prohibit building, he testified that practical application makes it cost prohibitive, that exemption hearings are expensive, and that he has not submitted permits to date. He has painted and replaced carpet and windows.

6. Mr. Buetow disagrees with the assigned land value of \$197,150.00, saying flood status prohibits improvement and subdivision, and therefore, impacts marketability.

7. Petitioner is requesting a 2003 actual value of \$250,000.00 for the subject property.

8. Respondent's witness, Loretta Barela, a Licensed Appraiser with the Jefferson County Assessor's Office, presented an indicated value of \$349,000.00 for the subject property based on the market approach.

9. Ms. Barela presented three comparable sales ranging in sales price from \$238,000.00 to \$330,000.00 and in size from 806 to 1,489 square feet. After adjustments were made, the sales ranged from \$313,100.00 to \$392,000.00. Ms. Barela selected comparable sales primarily for their site sizes, which ranged from 1.170 acres to 4.0 acres, and for multi-unit properties. Ms. Barela placed most weight on Sale 3 because it had a second detached house.

10. Ms. Barela testified that none of her comparable sales were in flood zones and that the land adjustments incorporated both the site size and the flood zone. She indicated that the smaller land size of Sale 1 was offset by its non-flood location. Ms. Barela stated that because she would have made an \$80,000.00 to \$100,000.00 adjustment for land size alone, the non-flood status would have had the same \$80,000.00 to \$100,000.00 impact. She calculated the land adjustments for Sales 2 and 3 as follows:

<u>Sale 2</u>	<u>Sale 3</u>
+ \$150,000 for smaller site	+ \$150,000 for smaller site
<u>- \$100,000 for non-flood zone</u>	<u>- \$ 90,000 for non-flood zone</u>
\$ 50,000 land adjustment	\$ 40,000 land adjustment

11. Respondent's witness testified that the subject property was valued "as is" and acknowledged that flood plain issues would impact potential future development.

12. Respondent assigned an actual value of \$336,550.00 to the subject property for tax year 2003.

## **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 acknowledges that flood-related regulations are in place for the safety of occupants and the general public but can be restrictive and costly. Although the Petitioner did not convince the Board that all repairs and improvements require city approval, the Board is convinced that expansion and new construction requires an engineer's certification and city approval.

3. The Board is not convinced that the subject's 5.656-acre site carries considerably more value than any of Respondent's sales. All of Respondent's sales are smaller, and none are located in flood zones. The site is on a traffic street, in a flood zone, and carries significant flood-related building restrictions.

4. The Board believes that the subject property's flood status would impact marketing and other potential uses. However, pursuant to Colorado Revised Statutes, property must be valued

4. The Board believes that the subject property's flood status would impact marketing and other potential uses. However, pursuant to Colorado Revised Statutes, property must be valued based on its current (rather than speculative future) use.

5. 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 \$300,000.00

**ORDER:**

Respondent is ordered to reduce the 2003 actual value of the subject property to \$300,000.00.

The Jefferson County Assessor is directed to change his/her 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 3<sup>rd</sup> day of November 2004.

**BOARD OF ASSESSMENT APPEALS**

Rebecca Hawkins  
Rebecca A. Hawkins

MaryKay Kelley  
MaryKay Kelley

This decision was put on the record

NOV 02 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

