

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>DAVE WINING LIVING TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Dave Wining Address: 4895 Lee Circle Boulder, Colorado 80303 Phone Number: (303) 449-4114 E-mail: dwining@aol.com</p>	<p>Docket Number: 43273</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 20, 2004, Diane DeVries and Judge Nuechter presiding. Petitioner was represented by D. L. Wining, Trustee. Respondent was represented by Michael Koertje, Esq. Petitioner is protesting the 2003 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**4895 Lee Circle, Boulder, Colorado
(Boulder County Schedule No. R0013707)**

The subject property is a 2,031 square foot single-family residential dwelling of split-level design constructed in 1972 on a 7,659 square foot lot.

ISSUES:

Petitioner:

Petitioner contends that the subject property was overvalued based on a comparison of other properties in his neighborhood.

Respondent:

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

FINDINGS OF FACT:

1. Mr. D. L. Wining, Trustee of the Dave Wining Living Trust, presented the appeal on behalf of Petitioner.
2. Based on the market approach, Mr. Wining presented an indicated value of \$420,000.00 for the subject property.
3. Mr. Wining testified that the subject property's lot is 10 to 30 percent smaller than other lots within the neighborhood. The subject's kitchen and dining room areas could only be expanded by 6' due to setback requirements.
4. The Petitioner testified that the total size, age and condition of the dwelling are important factors in determining value.
5. Mr. Wining compared the subject property to the lot sizes, total square footage and assigned values of other properties on Lee Circle and to other properties that are adjacent to a park.
6. Mr. Wining presented six comparable sales ranging in price from \$340,000.00 to \$425,000.00 and in size from 1,787 to 3,334 square feet. After applying the same adjustments the Respondent utilized in their report, Petitioner's comparable sales ranged from \$377,025.00 to \$423,420.00. Petitioner's Comparable Sales 5 and 6 sold outside the January 1, 2001 through June 30, 2002 base period.
7. During cross-examination, Mr. Wining testified that he based his time trending calculations on the Respondent's figures.
8. During questions from the Board, Mr. Wining testified that he was not familiar with the condition of the comparable sales, and therefore, made no adjustments for condition.
9. Petitioner is requesting a 2002 actual value of \$420,000.00 for the subject property.

10. Respondent's witness, Ms. Patricia Roberts, a Certified Residential Appraiser with the Boulder County Assessor's Office, presented an indicated value of \$515,000.00 for the subject property based on the market approach.

11. Respondent's witness presented six comparable sales ranging in sales price from \$453,000.00 to \$500,000.00 and in size from 1,899 to 2,414 square feet. After adjustments were made, the sales ranged from \$511,630.00 to \$593,135.00.

12. Ms. Roberts did not perform a physical inspection of the subject property but relied on the Respondent's records.

13. Respondent's witness testified that the subject dwelling has three levels above-grade with 2,013 square feet of living area with updating that includes a new roof and new windows. The subject also has a 650 square foot unfinished basement. The dwelling was built in 1972 and remodeled in 1998. A kitchen addition and porches were added to the dwelling. The property backs to a park area.

14. The Respondent's witness testified that two of the comparable sales were sold prior to the base period but were included in her report since they back to a park like the subject property.

15. Ms. Roberts testified that all of the Respondent's comparable sales have typical lot sizes and that land is valued on a per lot, rather than a per square foot basis. Site size does not affect the value of properties if they are considered typical.

16. During cross-examination, the Respondent's witness testified that it is possible that some owners remodel their residences without obtaining building permits. Therefore, assigned values may be lower, as the Assessor's office may not be aware of the improvements.

17. Respondent assigned an actual value of \$484,800.00 to the subject property 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.

2. Pursuant to Colorado Revised Statutes, residential property must be valued based on the market approach utilizing comparable sales that occurred within the base period. The Petitioner relied on equalization of property values in comparing the subject property's assigned value to the assigned values of other properties located on Lee Circle and properties adjacent to Arapahoe Ridge Park. The Board may not consider equalization when determining residential property value for ad valorem tax purposes.

3. The Board finds that the comparable sales presented by both parties are typical single-family residential sites and that no site size adjustments are warranted.

4. The Respondent presented a well-documented appraisal report utilizing similar split-level design dwellings and applying appropriate adjustments to reflect any differences in physical characteristics.

5. Petitioner's comparable sales were not adjusted to reflect differences in condition or updating.

6. Based on all of the evidence and testimony presented, the Board affirms Respondent's assigned value for tax year 2003.

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.

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 23rd day of December 2004.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries
Diane M. DeVries

Judith Nuechter
Judith Nuechter

This decision was put on the record

DEC 23 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

