

<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>JUSTINE R. KIRK,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PITKIN COUNTY BOARD OF COMMISSIONERS</b></p>	<p><b>Docket No.: 61920</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on August 12, 2013, Debra A. Baumbach and James R. Meurer presiding. Petitioner, Justine R. Kirk, appeared pro se. Respondent was represented by Laura Makar, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2011.

Subject property is described as follows:

**59 Magnifico Road Aspen, Colorado  
Pitkin County Parcel No. 2735-014-03-005**

The subject is a one-story, single-family house located in the Red Mountain submarket in unincorporated Pitkin County, just outside the city limits of the Town of Aspen. The house was constructed in 1959, and had a two car garage and 556 square foot art studio added in 1992. The first floor of the structure contains 2,062 square feet, and there is a garden level containing 1,190 square feet reflecting a total living area of 3,252 square feet. The exterior of the house is wood siding and the roof cover is tar and gravel. Lot size is 0.78 acres including a road easement. Based on testimony and exhibits, the subject is considered to be in overall average condition.

Petitioner is requesting an actual value of \$3,700,000 to \$4,000,000 for the subject property for tax year 2011. Respondent appraised the property for \$5,180,000; however, assigned a value of \$4,500,000 for the subject property for tax year 2011.

Petitioner testified that there were two significant factors that should impact the value of the subject. First, land values and home sales declined from 2008 to 2011, and this depreciation was not recognized by Respondent. Second, the lot is subject to an easement, and this easement

reduces the buildable area per code to 25,935 square feet. The impact of this easement and reduction in buildable area was also not recognized by Respondent. Petitioner further argued that the house was over 50 years old, and should be razed given the value and utility of the lot and that the subject was much inferior to the comparables provided by Respondent. Petitioner presented letters and emails from several real estate professionals in the Aspen area to support her arguments.

Respondent's witness, Mr. Lawrence Fite, a Certified General Appraiser with the Pitkin County Assessor's Office, considered all three approaches to value; however, only developed the market (sales comparison) approach. Mr. Fite presented five comparable sales to support his opinion of value. All of the sales were located in the Aspen market and sale prices ranged from \$742 to \$1,646 per square foot prior to adjustments and \$1,463 to \$1,683 per square foot subsequent to adjustments. The sales occurred in 2008 and 2010. The significant adjustments to the sales consisted of land value, age, living area, construction quality and garage. All of the sales were given equal weight in the conclusion of final value of \$5,180,000.

Although the appraised value is \$5,180,000, Respondent is supporting the assigned value of \$4,500,000.

Petitioner presented insufficient probative evidence and testimony to prove that the tax year 2011 valuation of the subject property was incorrect.

Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence. . ." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). After careful consideration of the testimony and exhibits presented at the hearing, the Board concludes that Respondent's five comparable sales and adjustments to the sales accurately reflect the market value for the subject property. The sales were well documented with individual narrative, and Comparables Nos. 1 and 3 were in close proximity to the subject. Sale No. 1 is most similar relative to location and Comps Nos. 4 and 5 are most similar relative to the size and quality of the subject. The Board concurs with Respondent that similar weight should be given to all of the sales in terms of the final opinion of value. The Board further concludes that the issues raised by Petitioner relative to land value and market conditions have been recognized in the assigned value.

## **ORDER:**

The petition is denied.

## **APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

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

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, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

**DATED and MAILED** this 29<sup>th</sup> day of August, 2013.

**BOARD OF ASSESSMENT APPEALS**

*Debra A. Baumbach*

Debra A. Baumbach

*James R. Meurer*

James R. Meurer

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

*Milla Lishchuk*

Milla Lishchuk

