

<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>LOWER MIDNIGHT, LLC,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PITKIN COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 66059</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on June 8, 2016, James R. Meurer and MaryKay Kelley presiding. Daniel Bender, agent, appeared on behalf of Petitioner. Respondent was represented by Laura Makar, Esq. Petitioner is protesting the 2015 actual value of the subject property.

Subject property is described as follows:

**201 Midnight Mine Road, Aspen, Colorado  
Pitkin County Schedule No. R003183**

The subject property consists of a 7,184 square foot residence built in 1969 and a detached guest house built in 1978. It is located on 15.28 acres along Castle Creek.

Respondent assigned an actual value of \$13,200,000. Petitioner is requesting a value of \$8,493,643.

Mr. Bender described the 2013 purchase of the subject property by Petitioner for \$13,990,000. At the same time, Petitioner purchased the adjacent property at 565 Midnight Mine Road. The primary goal was to expand the acreage at 565 Midnight Mine Road. After the purchase, 7.27 of 22.55 acres at 201 Midnight Mine Road were transferred to the property at 565 Midnight Mine Road.

Mr. Bender further testified that Petitioner, after realizing the scope of the subject's deficiencies, decided to sell and listed the subject property at \$15,000,000, later reducing the price to

\$13,500,000. After two years, Petitioner took the subject off the market. Mr. Bender argued that Petitioner was compelled to purchase 201 Midnight Mine Road in order to enlarge 565 Midnight Mine Road's acreage and thus overpaid. According to Mr. Bender, the subject's \$13,990,000 purchase price was not representative of the market, and Respondent should not have included it as a comparable sale.

Mr. Bender discussed the physical condition of the subject property. It had considerable deferred maintenance requiring substantial work; tree removal and trimming, stone column repair, roof and gutter replacement, bridge repair, staining of exterior siding, outdoor spa repair, lawn irrigation repair, boiler replacement, heat tape replacement, insulation removal, door and window replacement, faucet and plumbing replacement, electrical repairs, carpet replacement, guest house water line replacement, range and refrigerator replacement, and toilet plumbing replacement. An architect and general contractor estimated a repair cost of \$670,000.

Mr. Bender argued that the subject property violates Pitkin County's Land Use Code, which requires a setback of 100 feet from Castle Creek. The residence sits ten feet from the creek and thus is non-conforming. Mr. Bender estimated a market impact of \$500,000 for the setback impairment.

Mr. Bender defined a local regulation prohibiting residential footprints exceeding 5,750 square feet. Although the subject residence was "grandfathered in" because it was built prior to regulation, future owners will not be permitted to demolish and rebuild a similarly-sized structure. Mr. Bender argued that this prohibition negatively impacted the subject's marketability.

Mr. Bender presented a list of 15 comparable sales (*See* Petitioner's Exhibit 3), which sold between November, 2010 and December 2013, averaging their prices per square foot at \$1,010, and concluding to a value of \$7,319,883 after a 25% "impairment" discount.

In addition, Mr. Bender presented an analysis of three comparable sales (titled as "Sale Two," "Sale Four" and "Sale Five"), two of which were also used in Respondent's analysis (Petitioner's Sales Two and Four) and one additional sale at 922 Castle Creek Road (Petitioner's Sale Five). After applying adjustments for various characteristics, he re-calculated indicated values of Sales Two and Four, presenting adjusted sale prices of \$8,409,480 and \$7,947,580, respectively. After making adjustments to Sale Five's sale price of \$8,200,000, he concluded to an adjusted sale price of \$8,634,185. Mr. Bender concluded to a requested value of \$8,493,643 for the subject property for tax year 2015.

Respondent presented an indicated value of \$13,450,000. Respondent's witness, Lawrence C. Fite, Certified General Appraiser for the Pitkin County Assessor's Office, presented four comparable sales ranging in price from \$5,400,000 to \$21,000,000. After adjustments, the sale prices ranged from \$12,867,080 to \$13,787,200. He gave Sale One, the 2013 sale of the subject property, greatest weight.

Mr. Fite noted the home's proximity to Castle Creek, which he described as a significant marketing feature. He argued that its ambience outweighed non-conformance with the 100-foot setback regulation. He made no adjustment for the setback impairment.

With regard to the Land Use Code restriction, Mr. Fite noted that the subject's 9,204 square feet (including the guest house) far exceeded the 5,750 square foot limitation. He saw two options; occupy the residence as is or pursue change via purchase of a development right.

Mr. Fite assigned a quality rating of "very good," which reflected size, design, exterior and interior finishes, two or three master suites (jacuzzi, steam shower), custom kitchen, vaults, fireplaces, pools, media and game rooms, wine room, decks and patios, and so forth. According to Mr. Fite, the "effective year" assignment of 1995 reflected the condition of the improvements and physical depreciation.

Mr. Fite declined use of Petitioner's Sale Five because of its 2012 date of sale. He also declined to use Petitioner's other sales listed in Petitioner's Exhibit 3 for the following reasons; size, seasonal access, avalanche-prone locations, non-comparable neighborhoods, etc.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2015.

The Board is not persuaded by Petitioner's methodology of averaging sale prices of 15 comparables as reflected in Petitioner's Exhibit 3. Averaging sale prices is not an acceptable appraisal practice. Moreover, the Board does not find persuasive Petitioner's adjustments to the three comparable sales presented in Petitioner's Exhibit 48. The Board finds that Petitioner's adjustments are not supported by credible evidence. On the other hand, Respondent's adjustments are derived from paired sale analyses in addition to Mr. Fite's familiarity with and appraisal experience in the area. Also, Petitioner has not convinced the Board that an adjustment for the home's insufficient setback from Castle Creek is warranted. Finally, the Board declines the consideration of Petitioner's Sale Five because of its 2012 sale date.

The Board acknowledges Petitioner's concern about the inclusion of the subject's 2013 sale in Respondent's analysis. However, Mr. Fite's indicated value is well supported by Respondent's remaining Sales Two, Three and Four.

## **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-nine 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 of the respondent county, 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-nine 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 within thirty days of such decision 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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

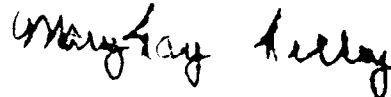
Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 22nd day of June, 2016.

**BOARD OF ASSESSMENT APPEALS**

  
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James R. Meurer



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MaryKay Kelley

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



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Milla Lishchuk

