

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioners:</p> <p>KIMBERLEY AND WILLIAM TYLER,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: William Tyler Address: 4022 South Olive Street Denver, Colorado 80237 Phone Number: (303) 756-7000</p>	<p>Docket Number: 39668</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 31, 2003, Karen E. Hart and Rebecca A. Hawkins presiding. Petitioners appeared pro se. Respondent was represented by Maria Kayser, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**4022 South Olive Street
(Denver County Schedule No. 07054 08 004 000)**

Petitioner is protesting the 2001 actual value of the subject property, a two story single-family residence built in 1971 with a two car attached garage, located on a 15,253 square foot site. The original home had 2,655 square feet, an addition of 2,198 square feet was added in 1998 for a total of 4,853 square feet.

ISSUES:

Petitioners:

Petitioners contend their property has been overvalued due to a defective addition that resulted in problems throughout the residence. The 10% (\$40,000.00) adjustment given in a previous hearing does not adequately reflect the condition during the base period and not all the sales used by the Respondent are similar to the subject property.

Respondent:

Respondent contends the subject property has been properly valued using sales of similar properties that occurred during the appropriate time period. Sales were adjusted for physical characteristics and the 10% (\$40,000.00) adjustment given in a prior hearing more than adequately accounts for the negative issues.

FINDINGS OF FACT:

1. Mr. Tyler presented the appeal on behalf of the Petitioners.
2. Based on the market approach, Petitioners presented an indicated value of \$235,000.00 for the subject property.
3. Petitioners presented thirty-one comparable sales ranging in sales price from \$159,000.00 to \$359,000.00 and in size from 2,023 to 3,973 square feet. Of the twenty-two sales, eight were adjusted for time but no adjustments were made for differences in physical characteristics. These eight sales ranged in price from \$262,000.00 to \$336,000.00 and in size from 3,042 to 3,973 square feet. After time adjustments were applied the sales ranged from \$271,956.00 to \$364,896.00.
4. Mr. Tyler testified that he had a home inspection when he purchased the property in 1998 and felt the home was fine at that time. In 1998 he took out a permit for an addition in the amount of \$120,000.00. The addition would add a storage area, utility room and basement warehouse space for his wife's veterinary practice.
5. Mr. Tyler testified that he began to notice roof leaks and recurring electrical problems after construction began. Numerous sub-contractors participated in construction so it was difficult to determine which one was responsible for the problems and the general contractor defaulted prior to completion. Mr. Tyler testified that it was at this time the construction defects and poor workmanship became apparent.
6. Mr. Tyler testified that the addition was not livable from July 1999 to May 2000. Attempts were made to retain another contractor to repair the defects. He obtained a bid for \$129,507.48, shown in Petitioner's Exhibit B, which included repairs to mechanical and electrical systems, paint and floor coverings.

7. Mr. Tyler testified that the problems persisted, through no fault of his own. A temporary repair on a leaking soffit resulted in water damage due to poor workmanship and materials. Due to defective construction methods and materials used on the addition, repairs were also needed on the original house. Mr. Tyler testified that his home is not a \$400,000.00 property. Due to the roof leaks and subsequent water damage, problems with the floor coverings, defective electrical connections and switches, he questions the marketability of his property.

8. Regarding Respondent's comparable sales, Mr. Tyler testified Comparable Sales 1, 2 and 3 are reasonable. However, Comparable 4 is outside the area, superior to his home and unfair to use. Since Comparable 4 is a larger, superior home it skews the result upward \$50,000.00. Without using Comparable 4, the average value of the three sales is \$347,000.00. Mr. Tyler testified that this value range would be correct for homes in excellent repair.

9. Under cross-examination Mr. Tyler testified to filing judgments totaling \$81,000.00 for fraud and poor performance. As to the original permit value of \$120,000.00, he believes he has gained only \$40,000.00 in property value.

10. Petitioner is requesting a 2001 actual value of \$235,493.00 for the subject property.

11. Respondent's witness, Mr. Glenn Haeflinger, a Certified General Appraiser with the Denver County Assessor's Office, presented an indicated value of \$450,000.00 for the subject property, based on the market approach.

12. Mr. Haeflinger presented four comparable sales ranging in sales price from \$297,000.00 to \$625,000.00 and in size from 2,916 to 4,400 square feet. After adjustments were made, the sales ranged from \$445,900.00 to \$481,100.00.

13. Mr. Haeflinger testified that the subject property is large for the development and he could not find sales similar in size within the immediate neighborhood. He made adjustments to the sales in Respondent's Exhibit #1 for differences in physical characteristics and placed greatest weight on comparable sales one through three.

14. Mr. Haeflinger testified that he is familiar with the issues and had inspected the subject property during 1999 and again on October 15, 2001. In 1999 he observed evidence of settlement; slight cracking was seen in the original house. He felt this was the only structural problem. In 2001 he testified to seeing the addition used as living space. He noted many electrical switches not working and some water damage. Mr. Haeflinger testified that the water damage was mostly cosmetic. The basement under the addition was partly finished and there was no evidence of flooding.

15. Mr. Haeflinger testified that some of the costs shown in Petitioner's Exhibit B are from normal wear and tear, not costs to cure the deficiencies.

16. Respondent's assigned an actual value of \$400,000.00 to the subject property for tax year 2001.

CONCLUSIONS:

1. Petitioners presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.

2. The Board finds Petitioners' argument compelling that further consideration should be given for factors affecting the subject property. The Board was convinced that water and structural damage was more than cosmetic.

3. The Board was convinced that the costs to cure deficiencies should be deducted from the appraised value. The Board would have welcomed more photos of the deficiencies but was adequately persuaded by Petitioners that deficiencies exist.

4. The Board relied upon Respondent's comparable sales to indicate the value of the subject property, with certain modifications. The Board agrees in part with the adjustments made to Respondent's sales. The Board agrees that Respondent's comparable sale 4 is superior to the subject and sales 1, 2 and 3 are most comparable.

5. The Board reviewed the estimate of repairs in Petitioners' Exhibit B and eliminated those not affecting the repair or completion of the addition. Removing the costs for normal wear and tear and/or those not applicable, leaves a total of \$90,000.00 for repairs. The Board believes a \$90,000.00 adjustment is necessary to reflect repairs for deficiencies.

6. The Board was convinced the subject property is an over-improvement for the neighborhood. After completion of the 2,198 square foot addition, the subject property will have a total of 4,853 square feet. In Exhibit #1, Respondent adjusted \$40.00 for size differences comparing the total square footage of 4,853 to the sales. This adjustment is reasonable for the original size of the home, but the Board believes it is too high for the square footage in the addition. By adjusting in this manner, the Board is concerned that the over-improvement was not addressed. Based on testimony and evidence presented, the Board feels the market will not pay the same value for the additional 2,198 square feet. The Board removed the 2,198 square feet from the total square footage, placing it as a separate line item then adjusting it at a lesser value per square foot. The Board feels this would compensate for the functional over-improvement of the addition. The Board then applied a negative \$90,000.00 adjustment as cost to repair deficiencies.

7. The Board made the aforementioned adjustments to Respondent's comparable sales that resulted in a value range of \$300,000.00 to \$359,000.00. The Board determined Respondent's sale 2 should be given most weight. It is most similar to the subject in condition and original size. The Board was not convinced that Respondent's comparable sales required a \$10,000.00 adjustment for site size or that sale 2 required a \$31,700.00 adjustment for design and appeal.

8. The Board carefully reviewed Petitioners' comparable sales and believes many are appropriate. However, the Board could give them little weight since they were not adjusted for differences in physical characteristics as required in basic appraisal practice.

9. After careful consideration of all the testimony and evidence presented, the Board concluded that the 2001 actual value of the subject property should be reduced to \$350,000.00.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$350,000.00.

The Denver 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 May, 2003.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Rebecca Hawkins

Rebecca A. Hawkins

This decision was put on the record

MAY 08 2003

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

