

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>RICHARD W. PHELAN,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Richard Phelan Address: 4295 Harlan Street Wheat Ridge, Colorado 80033-5119 Phone Number: (303) 421-4955</p>	<p>Docket Number: 41090</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 30, 2003, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by Mr. Mike Morgan, Petitioner's son-in-law. Respondent was represented by Lily W. Oeffler, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**4295 Harlan Street, Wheat Ridge, Colorado
(Jefferson County Schedule No. 025861)**

Petitioner is protesting the 2002 actual value of the subject property, a masonry dwelling constructed in 1950 consisting of 1,826 square feet located on a .211-acre site in Wheat Ridge, Colorado.

ISSUES:

Petitioner:

Petitioner contends that Respondent did not give enough consideration to the high street traffic and the commercial property in the area that is affecting the subject's value.

Respondent:

Respondent contends that the subject has been properly valued using the market approach to value. Consideration has been given for the high street traffic and for the commercial properties affecting the subject.

FINDINGS OF FACT:

1. Mr. Mike Morgan appeared as a witness and presented the appeal on behalf of Petitioner.

2. Based on the market approach, Petitioner presented an indicated value of \$130,000.00 for the subject property. Petitioner's witness did not present any comparable sales, choosing to critique Respondent's comparable sales and the size of adjustments made by Respondent's witness.

3. Mr. Morgan testified that there is a marked difference in the comparables used by the Respondent when compared to the subject. A prospective buyer would not choose the subject property over the comparables due to the high risk to children from the high street traffic. The subject property area consists of 85% to 90% businesses. Respondent's comparables are from an area that consists of 85% to 90% residential properties.

4. Mr. Morgan testified that there are three elements in setting the value: land, structure, and location. Petitioner has not considered the location; the neighborhood is moving from residential to business use. Petitioner conducted a traffic study. Harlan Street is a major connector to Interstate 70. The businesses in the area are not conducive to residential uses.

5. Mr. Morgan testified that Respondent's comparables are located in 100% residential neighborhoods with low traffic volume and are not located on a major connector or arterial street. Also, Mr. Phelan's lot is small, measuring 75 feet x 125 feet, whereas the other lots are about 10 feet deeper at 100 feet x 150 feet.

6. Petitioner is requesting a 2002 actual value of \$130,000.00 for the subject property.

7. Respondent's witness, Mr. Jack Blackstock, a Certified General Appraiser and Residential Department Supervisor with the Jefferson County Assessor's Office, presented an indicated value of \$167,000.00 for the subject property, based on the market approach.

8. Respondent's witness presented three comparable sales ranging in sales price from \$143,900.00 to \$178,500.00, and in size from 1,665 to 1,723 square feet. After adjustments were made, the sales ranged from \$160,700.00 to \$171,100.00.

9. Mr. Blackstock testified that the subject property was built in 1950, is of masonry construction, ranch design, and is currently used as a residence. There is no basement and the garage has been converted to living area. The subject has a swimming pool.

10. The subject property does not front on a quiet residential street; the street is two lanes and is a busy street. Many of the former residences in the area have been converted to commercial uses and the newer construction has been commercial buildings. The neighborhood is in transition.

11. Mr. Blackstock testified that he looked for comparables that were similar in size and age as the subject. He adjusted for differences such as traffic and physical characteristics. The adjustment to each comparable for traffic is \$3,500.00: a 2% adjustment. The adjustments for retail proximity range from \$8,200.00 to \$9,400.00: a 5% adjustment depending on sale date. The adjustments come from a study of sales and multiple regression analysis.

12. Mr. Blackstock testified that he has inspected the interior of the subject property and the exterior of the comparables.

13. Petitioner is requesting a further reduction due to the traffic on Harlan Street. Mr. Blackstock testified that the requested additional \$30,000.00 to \$35,000.00 adjustment is outside the typical adjustment range Respondent recognizes for residential properties that have a traffic attribute. The highest traffic adjustment given by Respondent, percentage-wise, is for properties located on Interstate 70 and C-470 (11% of the time-adjusted sales price). Properties located on Wadsworth, a higher traffic street than the subject, receive a 9% adjustment. The subject is adjusted 2% for traffic.

14. Under cross-examination, Mr. Blackstock testified that an 11% traffic adjustment is for six-lane highways. Respondent does not depend upon traffic counts, as they are often more than 10 years old. The adjustment is the same for a two-lane road regardless of the traffic count. The highest adjustment for the presence of retail properties is 5%, which is the same adjustment given to the subject property.

15. Respondent assigned an actual value of \$165,000.00 to the subject property for tax year 2002.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued for tax year 2002.

2. It is undisputed that the subject property's value is impacted due to its location in a primarily business neighborhood, and due to the high amount of traffic on the subject property's street. Respondent adjusted the subject property value due to these factors. Petitioner is requesting a further reduction, believing Respondent's adjustments were too small. However, Petitioner did not present sufficient traffic studies or sales of properties that were similarly impacted. Without such evidence, the Board could not determine whether a further adjustment was warranted.

3. After careful consideration of all the evidence and testimony presented, the Board determined that there was insufficient evidence to grant a further reduction in value and affirms Respondent's assigned value of \$165,000.00.

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 16th day of July, 2003.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Karen E. Hart

Karen E. Hart

This decision was put on the record

JUL 16 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

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