

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SHEPARD TRUST,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 46391</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 31, 2007, Debra A. Baumbach and MaryKay Kelley presiding. Petitioner was represented by Stephen T. Mimnaugh and Carol Mimnaugh. Respondent was represented by Eric Butler, Esq. Petitioner is protesting the 2005 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**28026 Meadowlark Drive, Golden, Colorado
Jefferson County Schedule No. 159153**

The subject is a split-level house built in 1995 on five acres in Spring Ranch. Respondent assigned a value of \$1,333,790.00 to the subject property for tax year 2005. Petitioner is requesting a value of \$1,074,860.00.

Based on the market approach, Respondent presented an indicated value of \$1,400,000.00 for the subject property. Respondent presented three comparable sales ranging in sales price from \$1,116,000.00 to \$1,335,000.00 and in size from 2,651 to 3,044 square feet. After adjustments were made, the sales ranged from \$1,311,300.00 to \$1,466,700.00.

Based on the market approach, Petitioner presented an indicated value of \$1,074,860.00. Petitioner adjusted Respondent's comparable sales resulting in an adjusted sales range of \$946,791.00 to \$1,151,834.00.

Main living area size:

Petitioner and Respondent presented different sizes for the subject property's prime living area. Petitioner relied on measurements by an architect and two appraisers for a square footage of 4,177. Respondent was unable to inspect the interior and relied on assessor records for a square footage of 4,312. Respondent acknowledged that two-story ceilings in the entry foyer and family room would likely have accounted for the discrepancy because Respondent only had external measurements for the subject property. The Board relies on Petitioner's prime living area of 4,177 square feet.

Basement size:

Petitioner presented basement square footage based on inspection and measurements by an architect. Respondent's witness was unable to inspect and measure the interior of the subject property. The Board relies on Petitioner's basement area of 1,667 square feet.

View, traffic and commercial development:

Petitioner applied positive \$30,000.00 adjustments to all comparable sales for the subject's superior mountain views and negative \$90,000.00 adjustments to comparable sales for the subject's proximity to commercial development, light pollution at night, and traffic noise from Interstate 70 and Colorado Highway 74. The Board finds no support for this adjustment. Respondent applied positive \$35,000.00 adjustments to all comparable sales for the subject's superior Continental Divide views. Respondent then reduced the indicated value by an additional \$35,000.00 to acknowledge the negative impact from commercial development and traffic, testifying that positive and negative views were offsetting. The Board agrees with Respondent.

Main living area square footage adjustments:

Petitioner adjusted prime living space at \$101.00 per square foot based on actual cost figures and experience in real estate construction. Respondent adjusted prime living space at \$148.00 per square foot based on the average of sales prices per square foot derived from market data. The Board relies on Respondent's adjustment of \$148.00 per square foot because Petitioner did not provide market evidence that this adjustment was incorrect.

Basement adjustments:

Petitioner assigned basement finish at \$80.00 per square foot, and Respondent assigned \$13.00 per square foot. The subject property's basement was unfinished with the exception of 78 square feet. Comparable sales were all ranch elevations with partially finished basements that included secondary bedrooms. Petitioner contended that the marketplace recognizes basement finish as prime living space, in part due to sloping mountain terrain offering walkouts. The Board finds that Petitioner's adjustment was not supported. Respondent argued that the cost of basement finish is never fully realized on resale and that primary rooms (living, dining, kitchen, and master) are located on upper levels and experience the most use. The Board was convinced that basements in the subject's subdivision carry greater marketability and value than below-grade basements addressed by the

Respondent's adjustment because they were built on sloping terrain and have more exterior finish, more and larger windows, and typically higher ceilings. The Board, acknowledging both parties' arguments, assigned a basement finish adjustment of \$50.00 per square foot.

Petitioner contended that the comparable sales' terrain provided more walkout potential with more and larger windows, exterior doors, and patios than the subject property, and that the market recognizes the difference. Respondent made no adjustments for either. The Board agrees with Petitioner and has assigned adjustments of \$25,000.00.

Miscellaneous Adjustments:

Market Condition: Respondent applied market adjustments to each of the comparable sales. Petitioner did not apply any time or market adjustment. The Board finds Respondent's market adjustments applicable.

Acreage: The Board agrees with Respondent that adjustments for acreage are not warranted due to similarity in size, terrain, solar exposure, and building footprint.

Garages: Petitioner made no adjustments, as the subject and all comparable sales have three-car garages. Respondent adjusted for square footage differences due to wider bays and additional storage capacity. The Board finds that these features contribute to marketability and value and assigns \$1,000.00 to the comparable sales.

Bathrooms: Petitioner addressed the bathroom count in square footage adjustments. Standard appraisal practice recognizes that bathrooms add value exclusive of square footage. Respondent's adjustments were supported.

Fireplaces: Respondent's adjustments of \$1,500.00 per fireplace or wood stove are reasonable. Petitioner's knowledge of Comparable Sale 2 having four fireplaces is accepted.

Decks and patios: Petitioner's adjustments were minimal. Respondent's adjustments were based on square footage. The Board considers patios and decks to be extensive in walk-out areas and equally marketable. A rear photo of the subject property shows large decks and patios. Square footage of decks and patios are not considered to affect marketability and value, and no adjustments are warranted.

Home theatre (Comparable Sale 3): Petitioner's adjustment of \$45,000.00 was not supported. The Board agrees that home theatres carry marketability to some purchasers but does not agree that they are expected in the subject's price range, and neither the subject property nor two of the comparable sales had theatre rooms. In addition, some of the electronic components become obsolete quickly, are removed prior to sale, and are considered personal property. The Board has assigned no value to the subject's home theatre.

Recalculation:

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2005.

Recalculation of Respondent's market grid using the adjustments listed above results in an adjusted value range from \$1,111,508.00 to \$1,290,649.00. After careful consideration the Board finds that Comparable Sales 1 and 2 are the best indicators of value, and therefore placed little weight on Comparable Sale 3. The Board concludes to a value of \$1,250,000.00 for the subject property for tax year 2005.

Petitioner placed reliance on cost figures for adjustments in the sales comparison analysis, citing *Arapahoe County Board of Equalization v. Podoll*, 935 P.2d 14, 16 (Colo. 1997), which references Colorado Constitution article X, section 3(1)(a): “[A]ctual value of residential real property shall be determined solely by consideration of cost approach and market approach to appraisal” Petitioner's reliance on that one sentence is misplaced. According to Colorado Revised Statutes section 39-1-103(5)(a), “The actual value of residential real property shall be determined solely by consideration of the market approach to appraisal.” Subsequent decisions have language that clarifies the market approach, namely *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146, 151 (Colo. 1988) (quoting *May Stores Shopping Centers, Inc. v. Shoemaker*, 376 P.2d 679, 683 (Colo. 1962) and *Fellows v. Grand Junction Sugar Co.*, 242 P. 635 (Colo. 1925)), which states that market value has been described as “what a willing buyer would pay a willing seller under normal economic conditions.”

Reimbursement of Costs:

On June 14, 2007 and August 8, 2007 the Board received Petitioner's letters requesting reimbursement of costs related to appealing this matter. The Board has reviewed these letters and denies the request.

ORDER:

Respondent is ordered to reduce the 2005 actual value of the subject property to \$1,250,000.00.

The Jefferson County Assessor is directed to change his records accordingly.

Petitioner's request for reimbursement of costs associated with this appeal 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 Colorado Revised Statutes ("CRS") section 24-4-106(11) (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 of the Respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS section 24-4-106(11) (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 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.

Colo. Rev. Stat. § 39-8-108(2) (2007).

DATED and MAILED this 22nd day of September 2007.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

This decision was put on the record

SEP 21 2007

MaryKay Kelley
MaryKay Kelley

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

Heather Heinlein
Heather Heinlein

