

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

Docket No.: 51291

Petitioner:

ELLEN C. TEMBY,

v.

Respondent:

DENVER COUNTY BOARD OF COMMISSIONERS.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on August 9, 2010, Diane M. DeVries and Karen E. Hart presiding. Petitioner appeared pro se. Respondent was represented by David V. Cooke, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2007.

Subject property is described as follows:

**5053 Tucson Way, Denver, Colorado
Denver County Schedule No. 01133-02-023-000**

The subject property consists of a bi-level style residence built in 1967 on a 7,900 square foot site located in the Montbello neighborhood. There are 1,026 square feet of above grade living area and 981 square feet of basement with a finished basement area of 911 square feet.

Petitioner purchased the subject property as a lender owned property after the base period, ending June 30, 2006. There was a prior sale of the subject property that occurred in April 2006 for \$205,000.00.

Based on the market approach, Petitioner presented an indicated value of \$93,000.00 for the subject property.

Petitioner presented four comparable sales ranging in sale price from \$133,500.00 to \$156,000.00 and in size from 1,703 to 2,011 total finished square feet. After adjustments were made, the sales ranged from \$123,813.00 to \$136,210.00.

Petitioner's Comparable Sale 1 was a short sale. Comparable Sale 2 was listed as a "fix-up." Comparable Sale 3 was a lender owned sale listed as needing "TLC." Comparable Sale 4 was a lender owned sale and was listed as "fix-up needed...sold as-is."

Petitioner's witness and husband, Charles Ginsburg of Creative Ethical Investments, Corp., testified that he had analyzed over 500 homes and inspected over 200 homes, including bank owned or HUD foreclosures in the Montbello area. As of June 30, 2006, he believed one of every two homes was in foreclosure.

Petitioner testified that she analyzed 255 homes and visited 125 homes, all of which were HUD or bank owned and located in the Montbello area. Petitioner testified that HUD and bank sales dominated the market. Ms. Temby is a real estate investor and looks for distressed sales priced for quick sale that would take an offer of 80% of the asking price. Petitioner did not look at other types of properties that were on the market at that time.

Ms. Temby testified that the tub and shower drains were blocked about nine feet from the toilet on the lower level of the house. The blockage was not total; it only occurred with multiple water usages. Ms. Temby believed the blockage was caused by cement that got into the drain after a remodel. Petitioner also testified that the basement electrical box was faulty.

Petitioner is requesting a 2007 actual value of \$93,000.00 for the subject property.

Respondent presented a value of \$175,000.00 for the subject property based on the market approach.

Respondent's witness, Ms. Creighton Angst, a Certified Residential Appraiser with the Denver County Assessor's office presented five comparable sales ranging in sale price from \$174,000.00 to \$215,500.00 and in size from 1,024 to 1,154 square feet. After adjustments were made, the sales ranged from \$170,500.00 to \$183,520.00. All of the sales were located in the Montbello neighborhood, were bi-level designs, and were similar in age and view to the subject property.

The subject property's base period sale was Comparable Sale 1. The subject property sold in superior condition as compared to its January 1, 2007 condition, and the sale price was adjusted downward for condition. None of the comparable sales were bank owned.

Ms. Angst testified that she inspected the subject property on July 2, 2010, reviewed information and photographs from Petitioner in October 2007, reviewed the listing information from April 2006, and reviewed foreclosure information.

Ms. Angst testified that there were many non-bank sales during the base period and that foreclosure sales did not dominate the market. Foreclosure sales dominated the market after the base period. There was no time trend; the market values were consistent over the 18-month base period.

Ms. Angst testified that she used over 700 arms-length sales in the Montbello neighborhood to determine her market based adjustments; whereas, Petitioner's adjustments were not market based. Ms. Angst testified that Petitioner's sales were not reflective of market value and were in fair condition when sold. There was a significant difference in sale price and condition between bank sales and owner-occupied sales. Petitioner's Sale 3 resold in May 2006 for \$193,000.00.

Respondent assigned an actual value of \$192,400.00 to the subject property for tax year 2007 but is recommending a reduction to \$175,000.00.

Sufficient probative evidence and testimony was presented to prove that the subject property was incorrectly valued for tax year 2007.

Respondent's witness presented a well-prepared, well-supported appraisal report. The sales were comparable to the subject property and the adjustments were well within acceptable limits. The recommended reduced value was well-supported, and the Board agreed with the concluded value.

Petitioner presented insufficient evidence to show that foreclosure sales dominated the market during the 18-month study period. Petitioner testified that she concentrated on foreclosure sales and did not present statistics for non-foreclosure versus foreclosure sales either in number or sale price differences. The Board was persuaded by Respondent that foreclosure sales were not dominating the market and therefore should not be used to value the subject property.

The Board concluded that the 2007 actual value of the subject property should be reduced to \$175,000.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on a 2007 actual value for the subject property of \$175,000.00.

The Denver County Assessor is directed to change his/her records accordingly.

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 13th day of October 2010.

BOARD OF ASSESSMENT APPEALS

Diane M DeVries

Diane M. DeVries

Karen E Hart

Karen E. Hart

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

Amy Bruins

Amy Bruins

