

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>RICHARD F. SMITH,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 59449</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 12, 2013, Gregg Near and Debra A. Baumbach presiding. Petitioner, Mr. Richard F. Smith, appeared pro se. Respondent was represented by Mitch Behr, Esq. Petitioner is protesting the 2011 actual value of the subject property.

Subject property is described as follows:

**3369 S. Flamingo Way
Denver, Colorado
Denver County Schedule No.06314-18-015-000**

The subject property is a single story wood frame residence built in 1956, located in the University Hills subdivision. There are three bedrooms, one bathroom, an attached one car garage, covered patio and no basement. There is 1,041 square feet of living area and the residence is situated on a 7,820 square foot site.

Petitioner is requesting an actual value of \$182,800 for the subject property for tax year 2011. Respondent assigned a value of \$200,100 for the subject property for tax year 2011.

Petitioner, Mr. Smith, contends that Respondent has not given adequate consideration to the condition of the property. Petitioner described peeling trim work, holes in the exterior walls, a bathroom leak that destroyed interior walls, no updating and aggressive settlement issues requiring foundation repair. During the entire valuation period, the property was in distress and uninhabitable.

According to Petitioner. Respondent's appraisal utilized sales superior in condition indicating higher value ranges.

Mr. Smith testified that the property had been leased through the Denver Housing Authority, Section 8 Tenant-Based Assistance Program from August 6, 2007 through July 31, 2008. According to Mr. Smith, he performs all the required work on the residence himself and after the tenant moved out, he was continually purchasing the repair items necessary to make the repairs and bring the property to average condition. The repair work was in process during the valuation period but had not been completed and the subject was not ready for a tenant to move in.

Mr. Smith presented four comparable sales ranging in sales price from \$171,000 to \$223,000 and in size from 951 to 1,088 square feet. Petitioner relied on two sales that were used at the CBOE level of appeal. Petitioner made no adjustments to sales 3 and 4; sales 1 and 2 were adjusted by the Assessor's Office for the CBOE appeal. In addition, Mr. Smith was provided with a list of sales that took place during the valuation period that were located in his neighborhood. Mr. Smith referenced one of the sales located at 2821 S. Grape Way as a potential comparable. Mr. Smith averaged sales 1, 2 and 4 for an indicated value of \$182,800.

Petitioner is requesting a 2011 actual value of \$182,800 for the subject property.

Respondent's witness, Ms. Diana Chilcutt, a Certified Residential Appraiser with the Denver County Assessor's Office, presented an indicated value of \$208,000 using the market approach. Ms. Chilcutt presented three comparable sales ranging in sales price from \$195,000 to \$224,900 and in size from 1,041 to 1,089 square feet. After adjustments, the sales ranged from \$199,000 to \$220,000.

Ms. Chilcutt testified she selected sales located within the same market area that were similar in size, style, quality, condition and location. Sale 1 was reported to have a garage conversion and was adjusted upward for functional obsolescence. Sale 2 was adjusted downward for condition, as this sale was reported to have a new kitchen, bath and windows. All of the sales required minimal adjustments supporting the value range. According to Ms. Chilcutt, the assigned value (\$200,100) is below the indicated value (\$208,100) reflecting any additional factors affecting the subject.

Ms. Chilcutt also discussed Petitioner's comparable sales noting that sales 1 and 2 were presented at the CBOE level and were based on the mass appraisal model. Petitioner's sale 4 sold after the valuation period but she nevertheless reviewed it based on a possible contract date during the valuation period. Sale 4 was purchased by an investor and sale 3 was a short sale with inferior location backing up to I-25. Petitioner's additional sale located at 821 S. Grape Way is a foreclosure sale and would not be considered in the analysis.

According to the witness, a sufficient number of suitable arms-length sales took place during the valuation period and the foreclosure and short sales are a minimal part of the market. Therefore, while arms-length and foreclosure sales could be considered in the mass appraisal model, they would not be appropriate for consideration in a site specific appraisal.

Ms. Chilcutt testified that based on the information provided by Petitioner, the subject property was in overall average condition and she had no reason to believe the work had not been completed on the property.

Respondent assigned an actual value of \$200,100 to the subject property for tax year 2011.

Petitioner presented sufficient probative evidence and testimony to show that the subject property was incorrectly valued for tax year 2011.

The Board placed minimal weight on Petitioner's market approach because Petitioner made no adjustments accounting for differences affecting the value ranges.

Petitioner's two comparable sales were offered at the CBOE level based on mass appraisal and the adjustment calculations were based on mass appraisal. Petitioner averaged the sales prices in concluding to a value and that is an unacceptable appraisal practice in determining the subject's value. Therefore, the Board concluded that Respondent's market approach was the most persuasive evidence presented at the hearing. Respondent utilized sales that were arms-length, and similar in size, style, quality and location. Limited adjustments were necessary for physical differences. The Board concluded that Respondent's sales best reflect the market during the applicable valuation time frame.

The Board was convinced by Petitioner's testimony and evidence that an adjustment should be given for the overall condition of the property. Although the Board was not provided with expense receipts for the required work, the photos in Petitioner's exhibit do show deferred maintenance items. The Board agrees that based on the subject's appearance from the exterior photos, Petitioner would likely not be able to obtain typical financing on the property without repairs. This would affect the market value of the property and the overall marketability.

The Board determined Respondent's adjustment of \$7,000 on sale 2 for condition is supportable. The Board applied a \$7,000 adjustment for condition and concluded to a value of \$193,100 for the subject property for tax year 2011.

ORDER:

Respondent is ordered to reduce the 2011 actual value of the subject property to \$193,100.

The Denver County Assessor's Office 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 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-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.

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

DATED and MAILED this 24th day of April, 2013.

BOARD OF ASSESSMENT APPEALS

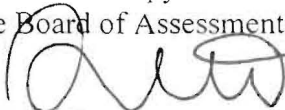


Gregg Near



Debra A. Baumbach

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



Milla Crichton

