

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**  
1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 61918**

Petitioner:

**MICHAEL WHITED,**

v.

Respondent:

**BOULDER COUNTY BOARD OF EQUALIZATION.**

## **ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on August 1, 2013. Diane M. DeVries and Louesa Maricle presiding. Petitioner appeared pro se. Respondent was represented by Mark Doherty, Esq. Petitioner is protesting the 2012 actual value of the subject property.

Subject property is described as follows:

**6148 Fourmile Canyon Drive, Boulder, Colorado  
Boulder County Account No. R0032379**

The property consists of a two-story single family residence situated on a 16,650 square foot lot in the Fourmile Canyon market area, within the Wall Street Townsite. The site is bisected by Fourmile Canyon Drive. The original portion of the residence was constructed in 1890 and an addition was built in 1980, comprising approximately 75% of the 1,278 square foot above grade living area. The one-bedroom, one-bathroom residence has a mixed wood and masonry exterior. The improvements are described by the Boulder County Assessor as average quality construction. The property has a well and septic system. Portions of the Fourmile Canyon area were burned in the Fourmile Fire that occurred on and following September 1, 2010. Many homes were lost, and significant areas wholly or partially denuded.

Petitioner is requesting an actual value of \$75,000 for the subject property for tax year 2012. Respondent assigned a value of \$113,100 for the subject property.

Petitioner contends that the house has many condition deficiencies and that the well does not produce adequate water for year round occupancy. Petitioner contends that Respondent has not adequately adjusted the value of his property for the burnt areas on three sides of his home, including

the adjacent high ground behind the home. Respondent has also not adequately adjusted for the impact of storm flood damage that occurred following the fire and the potential for that to continue for the next seven to ten years as a direct result of the fire. Respondent's comparable sales do not have the same level of deficiencies as the subject and are not located in areas that suffered the same level of fire destruction. Petitioner contends that ash laden silt from the fire has settled into his well and on the soil, and on-going run-off causes this area to no longer be desirable. Petitioner testified that the adjacent land above his house is steep causing significant rock fall, and any heavy rain causes flooding in the back of the house. Petitioner contends that the impact of external influences including the rock fall onto his property, and the storm run-off flooding carrying fire silt and debris resulting from the Fourmile Fire are the most significant factors detracting from value.

Petitioner presented two comparable sales. Sale 1 is a property with a 1,044 square foot house built in 1887 that sold in March 2009 for \$105,000. Sale 2 is a property with a 1,032 square foot residence built in 1955 that sold in May 2007 for a price of \$112,000. Petitioner testified that the sales are both in better condition than the subject property. Sale 2 is better quality construction, both appear to have year round water available, and the sales are not negatively impacted by the burn area or flood zones affecting the subject. Petitioner testified that in concluding to value, he considered the condition of the sales and also applied a 25% deduction to the two sale prices for the fire damage and flooding threat compared to the subject property and concluded to a value of \$75,000. Petitioner testified that he made no other market adjustments to the sales. In response to questioning about Petitioner's claim that the well produces insufficient water for year round occupancy of the residence, Petitioner testified that he receives mail at the subject address and is registered to vote at that address.

Respondent presented a value of \$120,900 for the subject property based on the market approach to value prepared by Stewart A. Leach, a Certified General Appraiser employed by the Boulder County Assessor's Office. Mr. Leach testified he was denied interior access to the subject property by Petitioner and had only limited visibility of portions of the exterior from the road and an adjacent property. The witness gave evidence that a search identified no statutory base period sales in the immediate vicinity of the subject that were meaningfully similar to the subject. Therefore, it was necessary to use sales of properties in other mountain areas within the county that a potential buyer of a small size, older mountain property would consider acceptable alternatives to the subject. The witness relied on three comparable sales that occurred from September 2005 to July 2008, all within the 60-month extended base period. The sales ranged in price from \$128,000 to \$185,000 and in improvement size from 576 to 1,349 square feet. The lot areas range from 5,712 to 13,939 square feet. The witness made adjustments to the three sales for differences including, but not limited to, the date of sale to reflect changing market conditions, land area, creek abutment, location within a FEMA mapped flood plain, quality of construction, gross living area, the number of bedrooms and bathrooms, and garage space. The witness testified that after adjustments were made, the sales indicated values of \$151,000 to \$165,000. The witness concluded to an initial indication of value for the subject of \$155,000. The witness then deducted 22% from the initial value indication to reflect the impact of the burn area, including run-off flooding and debris flows on improved properties in the affected areas. The adjustment is based on the Assessor's Office experience with previous fires in Boulder County and elsewhere in Colorado and an analysis by the Assessor's Office indicating that negative buyer perception of properties affected by burn areas decreases within the first three years after a fire. The analysis indicated negative market adjustments of 32%, 22%, and 12% for tax years 2011, 2012, and 2013, respectively. After that adjustment, the final conclusion of the market value

for the subject property is \$120,900. Because the value conclusion presented by Respondent's witness is higher than the assigned value, Respondent requested the assigned value of \$113,100 for the subject property.

Respondent's witness testified that Petitioner's sales are not considered appropriate because Sale 1 was an estate sale of a property that had been vacant for many years: the property does not have a well or septic system, and the listing broker reported the improvements were in poor condition. The sale price was only about one-third of the asking price indicating atypical seller motivation. Petitioner's Sale 2 is a very small site located at the highest point of Coal Creek Canyon. It does not have a well or septic system and the site is not large enough to qualify for a well or septic system. Therefore, large adjustments would be required to compare these properties to the subject.

The Board concludes that Petitioner failed to present sufficient probative evidence and testimony to prove that the value assigned to the subject property for tax year 2012 was incorrect or to support his value conclusion for the property. The Board finds that Petitioner's methodology of considering only the quality and condition of his comparable sale improvements, and making a quantified adjustment for impact from the burn area does not adequately consider all of the typical market adjustments needed to derive a value for the property and the Board cites the following:

"Direct sales comparisons, with sales adjustments determined from market analysis, will be made." *Assessor's Reference Library*, Volume 3, page 1.15

The Board concludes that adjustments to Petitioner's comparable sales are required for differences relative to the subject property such as, but not limited to, lot size, gross living area, and numbers of bedrooms and bathrooms, because the market places value on them. With regard to the 25% downward adjustment used by Petitioner for the impact of the burn area and subsequent actual and potential run-off flooding damage, the Board finds that no evidence was provided to persuade the Board that 25% is more accurate than the 22% adjustment used by Respondent's witness for those influences. The Board concludes that the evidence presented by Petitioner is insufficient to demonstrate a lower value for the subject property.

The Board finds there are significant physical differences between Respondent's comparable sales and the subject property in addition to the ages of the sales analyzed. However, the Board acknowledges that it is difficult to find sales of truly comparable properties within the immediate vicinity of the subject and Respondent's witness has made market adjustments to reflect the differences. The Board finds that Respondent's witness has attempted to make market adjustments to the sales for the differences in the FEMA mapped flood areas the properties are located in. However, Sale 3 is not in a mapped area. The Board finds that Respondent's witness testified that he relied on hearsay evidence from an acquaintance who lives in the vicinity of Sale 3 that the creek in the area does rise out of the banks at times, causing flooding. Therefore, the witness concluded that Sale 3 is impacted by a similar flood plain location as the subject. Based on the testimony, the Board concludes that the witness relied on insufficient evidence relative to his conclusion that no adjustment was warranted. However, the Board concludes that even if a downward adjustment to Sale 3 were to be supported, it would not lower the value assigned to the subject property.

The Board finds that Respondent did consider and make a downward adjustment to the market value of the subject property for the negative impact on value of the property's location next

to a Fourmile Fire burn area and the resulting impact of run-off flooding and debris flows that result in affected areas. Although the parties disagree on the percentage adjustment to be made, the Board concludes that the difference is relatively minor and even if Petitioner's 25% adjustment were to be applied to Respondent's appraisal analysis, the resulting value would not be lower than the assigned value. Therefore, the Board concludes that Petitioner is not harmed by this difference in the degree of adjustment.

**ORDER:**

The petition 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 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).

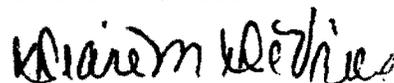
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 7<sup>th</sup> day of August, 2013.

**BOARD OF ASSESSMENT APPEALS**



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Diane M. DeVries

*Louesa Maricle*

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Louesa Maricle

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

*Milla Lishchuk*

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Milla Lishchuk

