

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>THOMAS OXLEY,</p> <p>v.</p> <p>Respondent:</p> <p>ARAPAHOE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 62757</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 28, 2014, Debra A. Baumbach and Amy J. Williams, presiding. Petitioner, Mr. Thomas Oxley, appeared *pro se*. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2013 actual value of the subject property.

Subject property is described as follows:

**4715 S. Ogden Street
Cherry Hills Village, Colorado 80113
Arapahoe County Schedule Number 2077-11-3-04-008**

The subject property consists of a 13,112 square foot, two-story, single family residence with a 4,096 square foot finished basement and a 2,188 square foot garage. Within the 13,112 gross building square footage, 3,364 square feet is an attached recreational wing which includes an indoor swimming pool, basketball court, exercise room and lockers. The residence was constructed in 2010 of frame construction with brick and stucco exterior and is considered to be of very good to excellent quality construction. The residence is located on a 0.92 acre lot.

Petitioner is requesting a value of \$3,075,000 for tax year 2013. Respondent assigned a value of \$3,926,400 for the subject property for tax year 2013 but is supporting a value of \$4,000,000 within their appraisal report.

Preliminarily, because it was presented by Respondent that an inspection of the subject was not allowed by Petitioner, and because square footage and quality of interior finish was considered a key aspect of the disagreement at issue, Ms. Merry Fix, Certified Residential Appraiser, was called as a witness by the Board to answer questions considering same. During this inquiry, Ms. Fix testified that the subject residence was constructed in 2010 and that it was viewed by various Assessor staff four or five times during the construction process. She also testified that it was last inspected just before the certificate of occupancy was issued. She was uncertain if building plans were made available to the Assessor staff that viewed and entered the characteristics of the subject into the Assessor database.

Petitioner, Mr. Oxley, called Mr. Theodore A. Rinehart as his first witness. Mr. Rinehart testified that he is both a broker and an appraiser specializing in high end properties in and around the Cherry Hills Village market area. He described the subject as being located at the west end of Cherry Hills, toward the softer end of the neighborhood. Mr. Rinehart further testified that the home is 13,112 square feet, but that he considered the recreational wing, totaling 3,364 square feet, to be an amenity likened to an outbuilding not excellent quality living area. Therefore, he deducted the recreational wing square footage from the total square footage and utilized 9,905 square feet of living area for comparison purposes. Mr. Rinehart testified that while the home was large, the interior finishes were average to good quality, not of the quality expected in a home of this size and location. Likewise, the exterior finishes were mostly stucco, not stone or more upscale material and the landscaping consisted of Astroturf and trees, lacking of extensive vegetation and water features associated with large estate homes.

Mr. Rinehart's testimony referenced page two of six within his appraisal report identified as Exhibit 1. He discussed his selection of comparables, noting that Comparable No. 1 was also utilized within Respondent's appraisal. After adjustment, the comparable sales indicated values for the subject ranging from \$2,963,200 or \$225.99 per square foot to \$3,399,300 or \$259.25 per square foot, both over 13,112 total square feet. Mr. Rinehart concluded to a value of \$3,075,000, or \$234.52 per square foot, for the subject property.

On cross examination, Mr. Rosenberg, attorney for Respondent, asked Mr. Rinehart how much ad valorem appeal work he is hired to perform, to which Mr. Rinehart state he has performed six to eight appraisals for ad valorem property tax appeals. Mr. Rosenberg asked what criteria he uses to value property for property tax appeals. Mr. Rinehart responded that he focuses on the Sales Comparison Approach with use of cost data when appropriate and relevant. Mr. Rosenberg inquired if he was aware that the SCA is the only relevant approach for residential property and Mr. Rinehart indicated that he was aware of this limitation. Further inquiry by Mr. Rosenberg elicited the fact that if Petitioner's appraisal referenced a lender it was a mistake. Mr. Rinehart, when asked about his time adjustments, responded that he did not apply a time adjustment and felt it was unwarranted over the eighteen month time period utilized. He also testified, upon inquiry by Mr. Rosenberg, that he did not make an adjustment for exterior finish even though Comparable No. 1's exterior finish was superior to the subject.

Mr. Rosenberg, called Ms. Merry Fix. Ms. Fix testified that she has been an appraiser with Arapahoe County for 29 years and has performed several hundred, to over 1,000, appraisals. Ms. Fix

further testified that the subject property consisted of 13,112 square feet of above grade, heated, living area and that the recreational wing within the subject residence fit the definition of living area and was treated as such in her appraisal. Ms. Fix referenced her appraisal report, discussing the comparables selected and adjustments made. After adjustment, the comparables supported a value for the subject property ranging from \$3,523,335, or \$268.71 per square foot, to \$4,332,416, or \$330.42 per square foot, over 13,112 total square feet. Ms. Fix concluded to a value of \$4,000,000 or \$305.06 per square foot for the subject.

Mr. Rosenberg directed Ms. Fix to Petitioner's Exhibit 1, the appraisal report prepared by Mr. Rinehart. Based upon Mr. Rosenberg's questions, Ms. Fix testified that she did not agree with the \$200,000 across-the-board quality adjustment applied by Mr. Rinehart as the comparables utilized had significant quality variations. She also indicated that the square footage of several of the comparables was inaccurate and stated that Comparable No. 6 was not a sale, rather a listing, albeit a listing under contract.

Mr. Oxley then cross examined Ms. Fix, first inquiring how she arrived at a \$600,000 lot value for each comparable. Ms. Fix responded that it was based upon zoning and location. He then asked how she arrived at the dollar adjustment applied to basement square footage, her reply being that it was determined from sales data through computer programming analysis.

During board questions, board member Williams asked if Ms. Fix was able to view the interior and exterior of each comparable. Ms. Fix testified that she had inspected the interior and exterior of some of the comparables and that in-house data was relied upon for the remaining comparables.

Respondent assigned an actual value of \$3,926,400 to the subject property for tax year 2013. This value was assigned by the Arapahoe County Board of Equalization. The appraised value supported in Respondent's appraisal, Respondent Exhibit A, being higher, that of \$4,000,000.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2013.

The Board gives equal weight to both sets of comparable sales provided, those of Petitioner and those of Respondent. The Board disagrees with Petitioner's approach to adjustment for the recreational wing square footage; this area is not a shed or outbuilding. However, the Board also disagrees that the recreational wing should be considered gross living area as asserted by Respondent. Respondent's treatment of the recreational wing gives inadequate consideration to the overall quality of this square footage and the functional obsolescence present. Therefore, with offsetting disagreements and equal consideration to the comparables selected, the Board concludes to a value in the middle of the reconciled values supported by Petitioner's and Respondent's appraisals, that range being \$3,075,000, or \$234.52 per square foot, to \$4,000,000, or \$305.06 per square foot.

ORDER:

The petition is granted. Respondent is ordered to reduce the 2013 actual value of the subject property to \$3,500,000.

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-nine days after the date of the service of the final order entered).

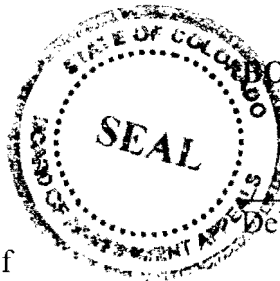
If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according 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-nine 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 13th day of March, 2014.



BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Amy Williams

Amy J. Williams

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

Milla Lishchuk

Milla Lishchuk