

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>MICHAEL WHITED,</p> <p>v.</p> <p>Respondent:</p> <p>BOULDER COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 71892</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on October 11, 2018, Debra Baumbach and MaryKay Kelley presiding. Petitioner appeared pro se. Respondent was represented by Casie A. Stokes, Esq. Petitioner is protesting the 2017 actual value of the subject property.

The Board admitted Petitioner’s Exhibits 1, 2, 3, 6 and 7 and Respondent’s Exhibit A.

Subject property is described as follows:

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

The subject is a 1,278 square-foot cabin built in 1890 on a 0.4-acre site. It is serviced by public electricity, a propane wall furnace, a well, and a septic system. The site is comprised of two rectangles bisected by Fourmile Canyon Drive, the access road through the canyon. The area, known as Fourmile Canyon, is a collection of small former-mining communities in the mountains west of Boulder. Fourmile Canyon was severely impacted by wildfires and flooding. Most of the subject site, including the cabin, lies near Fourmile Creek and within the floodway (a greater hazard than a flood plain). Canyon walls are steep, and flooding remains a threat.

Respondent assigned an actual value of \$172,000 for tax year 2017, which is supported by an appraised value of \$190,000. Petitioner is requesting a value of \$80,240.

Mr. Whited described the cabin as inferior in quality with floor joists set directly on dirt and rocks without a foundation. Flooring is uneven and offers entry to mice and other rodents. The cabin was built into the steep hillside, which has burn scars from four years of wildfires, erosion, and destabilization causing debris flow into the cabin. Electrical wiring is exposed and does not meet code. A 290-square-foot room added in 1980 is inadequately heated by a wood stove and is uninhabitable in winter. While Mr. Whited testified to replacing the metal roof in 2008 and repairing interior walls and ceilings prior to 2017, he reported materials as inferior (burlap, plywood, and rough-cut pine boards).

Mr. Whited discussed fire and flood-related problems visible in Exhibit 1 photos, saying the property is non-insurable. Following wildfires in 2011, 2012, 2013 and 2015, vegetation has not regenerated. Runoff from the 2015 flood (estimated to last seven to ten years) continues at eight years. The cabin was flooded to a level of two feet during the 2015 flood, resulting in mildew and mold. Radon levels were tested above the EPA action level at 4 pCi/L. The shallow well (eight or nine feet deep) was contaminated by sediment, Coliform, and heavy metals; well water is not potable. A culvert was built to access a neighbor's property and remains backed up with debris (Photo 8). Fourmile Canyon Road remains in flood-damaged condition (Photo 15). The Fourmile Watershed Coalition and hired laborers have partially restored the hillside and areas along the creek.

Mr. Whited, referencing Exhibit 1, Photo 10, described a Bureau of Land Management shed that collapsed onto the cabin. With the BLM denying ownership and refusing to remove the debris, he will be forced to incur the expense of remediation.

Mr. Whited, referencing Exhibit A, Page 8, described Fourmile Canyon Road as running less than ten feet from the front door of his cabin, resulting in traffic and dust. It is also hazardous for children and pets.

Again referencing Exhibit A, page 8, Mr. Whited disputed the subject's property lines. He testified that the property line on the east side of the northern portion wrongly includes the neighbor's site and that the northern portion's northern boundary line extends too far to the west. Exhibit 1 details existing easements, one for right of access across the property and one an inclusive easement resulting from an adverse possession lawsuit. He concluded that the result is use of the subject property for the benefit of others.

Mr. Whited discussed Fourmile Canyon Road, which remains flood damaged (see Exhibit 1, Photo 15). Despite a replacement date of Spring 2017, repairs in the upper canyon did not begin until Summer of 2018. While the County plans to expand the road from 12 to 18 feet, the project will, in his opinion, de-value the subject's historic appeal and marketability.

In review of Respondent's market analysis, Mr. Whited argued that the most critical issue is the location of the cabin within a floodway. Another issue is his home's construction into the hillside, which has resulted in considerable damage to the interior from runoff. Another issue is his home's location proximate to Fourmile Canyon Road. He argued that none of Respondent's comparable sales' improvements were located in floodways, that only one was built into a hillside, and only one sat near the road.

Mr. Whited presented Exhibit 6, a comparison of an improved neighboring property that sold for \$35,000 on March 9 of 2015. Comparing it to the subject property, he adjusted it for the following: lot size; improvement size, room count, and basement size; construction quality; well and septic; age; garage; decking; view; and cabin located outside the floodway. The assigned value of \$118,000 was adjusted by 32% (\$37,760) to derive a requested value of \$80,240.

Respondent's witness, Martin S. Soosloff, Certified Residential Appraiser for the Boulder County Assessor's Office, was refused an interior inspection. He determined an effective age of 1982 based on an exterior inspection, repairs to the cabin, and the 2012 roof replacement.

Mr. Soosloff presented a Sales Comparison Analysis with four sales located in Fourmile Canyon. Sale One, built in 1977, was larger and sat on a larger, level site with less wildfire scarring. Access required crossing Fourmile Creek, and the site sits within a floodway. Sale Two was a larger house built on a foundation in 1890 on a larger, steep site partially within a floodway and has been subjected to rock and mudslides. It, too, sat close to a road and required construction of a permanent access by purchasers. Sales Three and Four, both with burn scars were purchased for land value. Sale Three required mitigation of a fire-burned residence with a remaining foundation. Sale Four (built in 2013) was presented to show the strength of market demand in the canyon despite the potential of future flooding.

Mr. Soosloff testified that his condition adjustment reflected the subject cabin's construction quality, age, physical condition, the non-potable well, and the inadequate heating system. He did not consider the collapsed shed to be a factor or the cabin's proximity to Fourmile Canyon Road. He did not address the subject's debris-filled culvert.

Mr. Soosloff testified that the County, in order to reflect the impact from the 2013 flood, applied reductions to site values as follows: for tax year 2015 a 22% reduction for the impact of the flood and a 16% reduction for the impact of the fire; and for tax year 2016 a 16% reduction for the fire scar impact and a 12% reduction for the flood impact. For tax year 2017, the fire impact was lowered to 6.5% and the flood reduction was removed. In his appraisal, he adjusted for lot size only, considering the above-mentioned reductions to have already been applied.

Mr. Soosloff discussed Petitioner's comparable property, contending that it was not a qualified sale because it had no clear title and no identifiable property lines. In addition, it had significant flood damage, incurred a stigma resulting from a suicide, and should be demolished.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2017.

The Board is convinced that Petitioner's only comparable sale is not qualified due to the reasons stated by Respondent's witness.

The Board finds Respondent's Sale Two most comparable to the subject due to its similarity in age.

The Board finds that Respondent's witness failed to adequately adjust for condition. Mr. Soosloff included age, physical condition, the non-potable well, and the inadequate heating system in his \$10,000 adjustment. The well water's potability is unknown, might be incurable, could require a new well, and would clearly impact marketability. The inadequate heat source, although curable, would impact marketability. The witness did not address infestation, mold and mildew, and radon, which affects health and would also affect marketability. He did not address the cost and impact of bringing the electrical system up to code or leveling the foundation. While Petitioner failed to provide estimates for the cost and impact on the marketability of these issues, the Board finds that the condition adjustment is considerably underestimated, and estimates mitigation and the impact on marketability to be at least triple the amount adjusted.

The Board is also persuaded that proximity to the road and existing easements should be addressed. However, Petitioner failed to present any impact on marketability for these issues, leaving the Board unable to make additional adjustments.

The Board finds that the subject's location within a floodway was adequately addressed simply by Respondent's selection of comparable sales, which lie in Fourmile Canyon and are impacted similarly.

The Board finds that a reduction to \$160,000 is supported.

ORDER:

Respondent is ordered to reduce the 2017 actual value of the subject property to \$160,000.

The Boulder County Assessor is directed to change their 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-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 16th day of November, 2018.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

MaryKay Kelley

MaryKay Kelley

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

Milla Lishchuk

Milla Lishchuk

