

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ROSS BACHOFER,</p> <p>v.</p> <p>Respondent:</p> <p>WELD COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 75479</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on December 6, 2019, Diane M. DeVries and Samuel M. Forsyth presiding. Petitioner appeared pro se. Respondent was represented by Karin McDougal, Esq. Petitioner is protesting the 2019 actual value of the subject property.

EXHIBITS

The Board admitted Petitioner’s Exhibit 1 and Respondent’s Exhibit A.

DESCRIPTION OF THE SUBJECT

Subject property is described as follows:

**7525 Highway 85
Fort Lupton, Colorado
Weld County Schedule No.: 130930000048**

The subject site is 6.361 partially wooded acres with a generally level topography. Approximately 2.2 acres are in the floodway (Zone E) and 2.6 acres are located within the 100-year floodplain (Zone AE). The site is improved with a 1,575 square foot single-family ranch dwelling. The framed hardboard house was constructed in 1994. It has 1,575 square feet of basement of which 945 square feet are finished. The single family residence is also partially (33%) located in the 100-year floodplain.

PETITIONER'S PRESENTATION

Petitioner testified that his property is located within floodplain which creates high risk of water damage to the subject. He testified that historically there has been flooding on the property and he is not required to carry flood insurance. However, according to Petitioner, in recent years, the basement level of his home could flood up to 1.5 feet deep. In August of 2004, his property first experienced flood above the garden level. The most recent flooding occurred approximately three years ago. Petitioner testified that he requires help in forcing the County to enforce the floodplain regulations. Petitioner testified that he has been told by several realtors that his property is unmarketable due to flooding. Petitioner is requesting a value of \$50,000 for the subject property for tax year 2019.

According to Petitioner, Respondent overvalued the subject and Respondent's comparables are not appropriate because they are not river front properties. Petitioner explained that the river path near his property makes the subject unique.

RESPONDENT'S PRESENTATION

Respondent presented the testimony of Mr. Duane Robson, Senior Residential Appraiser, Weld County Assessor's Office. Mr. Robson described the attributes of the subject and stated that he considered the subject's location within the floodplain when valuing the subject. Mr. Robson conducted an exterior inspection of the subject and interviewed owners of comparable properties. Mr. Robson also conducted a highest and best use analysis for the property, determining that the subject's highest and best use is what the property is used now – a river front property.

Mr. Robson prepared a market approach in valuing the subject. The witness reviewed a total of 60 sales within the subject property's neighborhood and surrounding area that occurred between 1/1/2014 and 6/30/2018. The properties' net sales prices ranged from \$120,000 to \$800,000. The median sales price was \$423,000. The witness selected four comparable sales for his market approach. After adjustments for time, land size, quality, condition, age, square footage, number of baths, basement finish, garage, outbuildings, 100-year flood plain and floodway, the witness concluded to the range of value between \$294,726 and \$420,322 for the comparable sales. Mr. Robson concluded to \$380,000 for the subject property which supports Respondent's assigned value of \$227,000 for the subject property for tax year 2019.

BURDEN OF PROOF

In a proceeding before the Board, the taxpayer has the burden of proof to establish, by a preponderance of evidence, that the assessor's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Preponderance of the evidence refers to the evidence that is most convincing and satisfying in the controversy between the parties. *Batterberry v. Douglas Cty. Bd. of Equalization*, 16CA1490 (Colo. App. 2017). The evaluation of the credibility of the witnesses and of the weight, probative value, and sufficiency of the evidence is solely within the fact-finding province of the BAA. *Bradford v. Chaffee Cty. Bd. of Equalization*, 12CA0927 (Colo. App. 2013).

THE BOARD'S FINDINGS AND CONCLUSIONS

Petitioner provided no expert testimony and no appraisal. Petitioner's testimony and exhibits were replete with documentation of flooding issues on the subject property and documented communication with Weld County regarding the Petitioner's concerns. No market data was provided to show the impact of flooding on similarly situated properties.

Respondent's appraisal report recognized and accounted for the impact of the property's flood zone/floodway by virtue of adjustment for flood plain to the comparables sales. When questioned by the Board regarding the possibility of interior flooding and the impact on value, Respondent testified that evidence of interior flooding could be assumed given the evidence of water stains on the exterior walls, but that the Respondent could not be sure that there was flooding of the interior.

Respondent testified that the indicated value of the subject of \$380,000 on the appraisal report assumed that there was no interior flooding of the subject property. If there were interior flooding, Respondent testified that there would be no basement size and basement finish adjustments for the comparables. The Board's determination is that the comparables should be adjusted as if there were effectively no basement or basement finish. The basement size and basement finish adjustment for the comparables, assuming the subject has no basement or basement finish, applying \$20 per square foot for basement size and \$15 for basement finish, are as follows:

comparable sale	1	2	3	4
adjusted value	\$368,985	\$415,418	\$294,726	\$420,322
basement size	1,762	1,404	2,252	-
adjustment for basement size @\$20 / sf	\$ 35,240	\$ 28,080	\$ 45,040	\$ -
basement finish	-	884	-	-
adjustment for basement finish @\$15 / sf	\$ -	\$ 13,260	\$ -	\$ -
total basement adjustments	\$ 35,240	\$ 41,340	\$ 45,040	\$ -
revised adjusted value	\$333,745	\$374,078	\$249,686	\$420,322

After application of the adjustments above, the Board finds the analysis of the Respondent to be compelling. The Board finds that the Respondent's appraisal should have stated an extraordinary assumption regarding the unresolved question and possible impact on value of flooding of the interior of the subject property. The Board recommends that both the Petitioner and the Respondent endeavor to arrange an interior inspection for future valuation periods.

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-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 31st day of December, 2019.

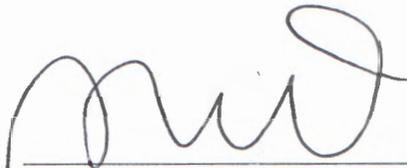
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



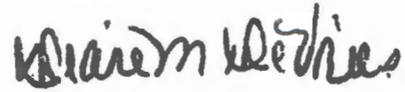
Samuel M. Forsyth

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



Milla Lishchuk

Concurring Board Member:



Diane M. DeVries,
*concurring without modification pursuant to
Section 39-2-127(2), C.R.S.*

